Montana Legislative History

Chapter: 379 Session L: 1983

Bill Number: 194 **Senate**

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	N/A
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Judiciary

Hearing Date(s):
March 16, 1983
March 22, 1983
Executive Action

Senate

Committee: Judiciary

Hearing Date(s):
January 28, 1983 (minutes not available)
February 3, 1983 Executive Action

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by:

Date:

Notes:

SENATE BILL NO. 194

INTRODUCED BY AKLESTAD, ROUSH

IN THE SENATE

January 18, 1983	Introduced and referred to Committee on Judiciary.
February 3, 1983	Committee recommend bill do pass as amended. Report adopted.
February 4, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to Committee on Judiciary.
March 22, 1983	Committee recommend bill be concurred in. Report adopted.
	Second reading, pass consideration.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983	Returned to Senate. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 194

INTRODUCED BY ARLESTAD, ROMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; PROVIDING FOR PAYMENT OF WITNESS EXPENSES AND THE COSTS OF IMPANELING A JURY FROM THE DISTRICT COURT FUND; REQUIRING PAYMENT OF PART OF THE INTEREST ON THE TRUST FOR UNLOCATED MINERAL OWNERS TO THE DISTRICT COURT FUND; AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, 46-17-202, AND 82-1-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' ~~Certificates~~ Warrants", which must contain the blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route)."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' ~~certificates~~ warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a ~~certificate~~ warrant taken from a book containing a ~~stub with like--designations~~ carbon copy of the same, signed by the clerk ~~under seal~~, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ district court fund."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute

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the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a ~~certificate taken from a book containing a stub with a like designation,~~ warrant signed by himself ~~under seal,~~ in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ district court fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

Section 4. Section 3-15-205, MCA, is amended to read:

"3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse

to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county ~~general~~ district court fund."

Section 5. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court or jury commissioner. The court or jury commissioner must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313 ~~or 3-15-507~~."

Section 6. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused -- affidavit to claim excuse. (1) The court or jury commissioner shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the ~~clerk of the court~~ jury

commissioner for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the ~~clerk of the court~~ jury commissioner, who shall transmit it to the court. The court or jury commissioner may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

~~(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507.~~"

Section 7. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn. ~~and the~~ The time at which the jurors are required to attend~~, which time may~~ must be at ~~the same term in which the jurors are drawn or at the next succeeding term, in~~ the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve."

Section 8. Section 3-15-502, MCA, is amended to read:

"3-15-502. Jury commissioner. The clerk of court is the jury commissioner, and the commissioner may appoint a deputy pursuant to 7-4-2401."

Section 9. Section 3-15-505, MCA, is amended to read:

"3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail ~~in such form as the supreme court designates~~ as to their qualifications to serve as trial jurors. He may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse as provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice."

Section 10. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ~~capsules~~ ballots. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and ~~the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313(1)~~ not excused.

(2) The ~~clerk shall write the~~ names of the jurors present and not excused must be written on separate ballots, ~~fold the ballots so that~~ with the names are concealed, ~~and place them in black capsules. In the presence of the court, the~~ The clerk shall deposit the ~~capsules containing the~~ ballots in a box large enough to hold all of the ~~capsules~~

ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ~~capsules~~ ballots from the box is unable to see the ~~capsules~~ ballots he is about to draw. ~~The box must be kept sealed or locked until ordered by the court to be opened.~~"

Section 11. Section 7-33-2314, MCA, is amended to read:

"7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

~~(2) exemption from jury duty;~~

~~(3)~~(2) exemption from military duty except in case of war, invasion, or insurrection."

Section 12. Section 7-33-2315, MCA, is amended to read:

"7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire

department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military ~~and jury~~ duty.

(3) Each certificate entitles the holder to exemption from military ~~and jury~~ duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates."

Section 13. Section 25-7-202, MCA, is amended to read:

"25-7-202. Judge <u>or jury commissioner</u> to draw ~~capsules containing~~ ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge <u>or jury commissioner</u> in the presence of ~~the clerk of the court~~ <u>two</u>

<u>witnesses</u> must openly draw out of the trial juror box as many of the ~~capsules containing~~ ballots with the names of jurors thereon, one after another, as are sufficient to form a jury <u>for the cause to be tried</u>. <u>Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.</u>"

Section 14. Section 25-7-203, MCA, is amended to read:

"25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the ~~capsules~~ <u>ballots</u> then undrawn; but in any other case the ~~capsules--containing--the~~ ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom."

Section 15. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ~~capsules~~ <u>ballots</u>. Before the first ~~capsule containing a~~ ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ~~capsules~~ <u>ballots</u> therein. The district judge must draw <u>at random</u> a ~~capsule--containing--a~~ ballot with the juror's name thereon ~~through--an aperture made in the lid large enough only to admit his hand conveniently and without said judge gazing into said box before or while drawing said~~

~~capsule.~~ Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 16. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the ~~district--judge~~ jury commissioner shall, pursuant to an order of the court to be entered in the minutes, in the presence of ~~the clerk of--the court~~ two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified under an order made as prescribed in this section, the court may make another order or successive orders until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 17. Section 25-7-208, MCA, is amended to read:

"25-7-208. ~~Capsules--containing--ballots~~ Ballots of

jurors who have been sworn. The ~~capsules containing the~~ ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ~~capsules--containing~~ ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ~~capsules containing the~~ ballots with the names of the jurors thereon must be returned to the box from which they were first taken."

Section 18. Section 25-7-209, MCA, is amended to read:

"25-7-209. ~~Capsules--containing--ballots~~ Ballots of jurors not sworn. The ~~capsule containing the~~ ballot with the name of a juror who is absent when his name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ~~capsules~~ ballots as soon as the jury is sworn."

Section 19. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county ~~jury commission~~ commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet

the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants."

Section 20. Section 82-1-304, MCA, is amended to read:

"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the

appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the ~~general~~ <u>district court</u> fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 194

INTRODUCED BY AKLESTAD, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; ~~PROVIDING--FOR--PAYMENT--OF WITNESS-EXPENSES-AND-THE-COSTS-OF-IMPANELING-A-JURY-FROM-THE DISTRICT--COURT--FUND;--REQUIRING--PAYMENT--OF--PART--OF-THE INTEREST-ON-THE-TRUST-FOR-UNLOCATED-MINERAL--OWNERS--TO--THE DISTRICT--COURT--FUND;~~ AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, ~~AND 82-1-304,~~ MCA."

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(1) keep a book called "Book of Jurors" ~~certificates~~ warrants", which must contain the blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-5-511;

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SECOND READING

must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

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(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

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issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county ~~general district court~~ GENERAL fund."

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~~(3)--A-person-may-also-be--excused--from--jury--service upon--presentation-of-his-excuse-to-the-court-as-provided-in 3-15-507.~~"

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specify the number of jurors to be drawn. ~~and-the~~ The time at which the jurors are required to attend~~, which--time--may~~ must be at ~~the-same-term-in-which-the-jurors-are-drawn-or-at the-next-succeeding-term, in~~ the discretion of the court.

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(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

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(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military ~~and jury~~ duty.

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"25-7-202. Judge <u>or jury commissioner</u> to draw ~~capsules containing~~ ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge <u>or jury commissioner</u> in the presence of ~~the clerk of the court~~ <u>two witnesses</u> must openly draw out of the trial juror box as many of the ~~capsules containing~~ ballots with the names of jurors thereon, one after another, as are sufficient to form a jury <u>for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.</u>"

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"25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the ~~capsules~~ <u>ballots</u> then undrawn; but in any other case the ~~capsules containing the~~ ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom."

Section 15. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ~~capsules~~ <u>ballots</u>. Before the first ~~capsule containing a~~ ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the ~~capsules~~ <u>ballots</u> therein. The district judge must

draw at random a ~~capsule--containing--a~~ ballot with the juror's name thereon ~~through-an-aperture--made--in--the--lid large-enough-only-to-admit-his-hand-conveniently-and-without said-judge-gazing-into-said-box-before-or-while-drawing-said capsule.~~ Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 16. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the ~~district-judge~~ jury commissioner shall, pursuant to an order of the court to be entered in the minutes, in the presence ~~of the-clerk-of-the court~~ two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified under an order made as prescribed in this section, the court may make another order or successive orders until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and

notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 17. Section 25-7-208, MCA, is amended to read:

"25-7-208. ~~Capsules---containing--ballots~~ Ballots of jurors who have been sworn. The ~~capsules--containing--the~~ ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ~~capsules-containing~~ ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ~~capsules-containing-the~~ ballots with the names of the jurors thereon must be returned to the box from which they were first taken."

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"25-7-209. ~~Capsules---containing--ballots~~ Ballots of jurors not sworn. The ~~capsule-containing-the~~ ballot with the name of a juror who is absent when his name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn ~~capsules~~ ballots as soon as the jury is sworn."

Section 19. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county ~~jury commission~~ commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within

the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as

all of the defendants."

~~Section 20. Section 82-1-304, MCA, is amended to read:~~

~~"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.~~

~~(2) No trustee or attorney fees may be paid from the trust proceeds.~~

~~(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.~~

~~(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.~~

~~(5) The trustee shall invest funds under his management in the manner of a prudent man as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general district court fund of the county in which the mineral interest is located to defray the costs of administration.~~

~~(6) Funds held in the trusts are subject to the~~

1 ~~provisions--governing--abandoned-property-contained-in-Title~~

2 ~~78,-chapter-9,"~~

-End-

SENATE BILL NO. 194

INTRODUCED BY AKLESTAD, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; ~~PROVIDING--FOR--PAYMENT--OF WITNESS-EXPENSES-AND-THE-COSTS-OF-IMPANELING-A-JURY-FROM-THE DISTRICT--COURT--FUND;--REQUIRING--PAYMENT--OF--PART--OF-THE INTEREST-ON-THE-TRUST-FOR-UNLOCATED-MINERAL--OWNERS--TO--THE DISTRICT--COURT--FUND;~~ AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, ~~AND 82-1-304,~~ MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors" ~~certificates~~ warrants", which must contain the blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route)."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' ~~certificates~~ warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a ~~certificate~~ warrant taken from a book containing a ~~stub with like designations~~ carbon copy of the same, signed by the clerk ~~under--seal~~, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ ~~district--court~~ GENERAL fund."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. Duties of clerk as to jurors. (1) The clerk

THIRD READING

must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a ~~certificate taken from a book containing a stub with a like designation,~~ warrant signed by himself ~~under seal~~, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general district court~~ GENERAL fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

Section 4. Section 3-15-205, MCA, is amended to read:

"3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the

issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county ~~general district court~~ GENERAL fund."

Section 5. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court or jury commissioner. The court or jury commissioner WITH THE APPROVAL OF THE COURT must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313 ~~or 3-15-507~~."

Section 6. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused -- affidavit to claim excuse. (1) The court or jury commissioner WITH THE APPROVAL OF THE COURT shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the ~~clerk--of--the--court~~ jury commissioner for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the ~~clerk-of-the court~~ jury commissioner, who shall transmit it to the court. The court or jury commissioner WITH THE APPROVAL OF THE COURT may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

~~(3)--A-person-may-also-be--excused--from--jury--service upon--presentation-of-his-excuse-to-the-court-as-provided-in 3-15-587.~~"

Section 7. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must

specify the number of jurors to be drawn. ~~and-the~~ The time at which the jurors are required to attend~~, which--time--may~~ must be at ~~the-same-term-in-which-the-jurors-are-drawn-or-at the-next-succeeding-term,-in~~ the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve."

Section 8. Section 3-15-502, MCA, is amended to read:

"3-15-502. Jury commissioner. The clerk of court is the jury commissioner~~.~~ and the commissioner may appoint a deputy pursuant to 7-4-2401."

Section 9. Section 3-15-505, MCA, is amended to read:

"3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail ~~in such form as the supreme court designates~~ as to their qualifications to serve as trial jurors. He may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse as provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice."

Section 10. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ~~capsules~~ ballots. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and ~~the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313(1)~~ not excused.

(2) The ~~clerk shall write the~~ names of the jurors present and not excused must be written on separate ballots, ~~fold the ballots so that~~ with the names are concealed~~,~~ and ~~place them in black capsules, in the presence of the court,~~ the ~~The~~ clerk shall deposit the ~~capsules containing the~~ ballots in a box large enough to hold all of the ~~capsules~~ ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ~~capsules~~ ballots from the box is unable to see the ~~capsules~~ ballots he is about to draw. ~~The box must be kept sealed or locked until ordered by the court to be opened.~~"

Section 11. Section 7-33-2314, MCA, is amended to read:

"7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

~~(2) exemption from jury duty;~~

~~(3)~~(2) exemption from military duty except in case of war, invasion, or insurrection."

Section 12. Section 7-33-2315, MCA, is amended to read:

"7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must

receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military ~~and jury~~ duty.

(3) Each certificate entitles the holder to exemption from military ~~and jury~~ duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates."

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"25-7-202. Judge <u>or jury commissioner</u> to draw ~~capsules containing~~ ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge <u>or jury commissioner</u> in the presence of ~~the clerk of the court~~ <u>two witnesses</u> must openly draw out of the trial juror box as many of the ~~capsules containing~~ ballots with the names of jurors thereon, one after another, as are sufficient to form a jury <u>for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.</u>"

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(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and

notified. He is subject to the same exceptions and challenges as any other trial juror."

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"25-7-208. ~~Capsules---containing--ballots~~ Ballots of jurors who have been sworn. The ~~capsules--containing--the~~ ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ~~capsules-containing~~ ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ~~capsules-containing-the~~ ballots with the names of the jurors thereon must be returned to the box from which they were first taken."

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"46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county ~~jury commission~~ commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within

the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as

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~~"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.~~

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~~(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.~~

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~~(6) Funds held in the trusts are subject to the~~

1 ~~provisions--governing--abandoned-property-contained-in-Title~~

2 ~~70v-chapter-9v"~~

-End-

SENATE BILL NO. 194

INTRODUCED BY AKLESTAD, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; ~~PROVIDING--FOR--PAYMENT--OF WITNESS-EXPENSES-AND-THE-COSTS-OF-IMPANELING-A-JURY-FROM-THE DISTRICT--COURT--FUND;--REQUIRING--PAYMENT--OF--PART--OF-THE INTEREST-ON-THE-TRUST-FOR-UNLOCATED-MINERAL--OWNERS--TO--THE DISTRICT--COURT--FUND;~~ AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, ~~AND-82-1-304,~~ MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' ~~Certificates~~ Warrants", which must contain the blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route)."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' ~~certificates~~ warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a ~~certificate~~ warrant taken from a book containing a ~~stub with like designations~~ carbon copy of the same, signed by the clerk ~~under--seal~~, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ ~~district--court~~ GENERAL fund."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. Duties of clerk as to jurors. (1) The clerk

REFERENCE BILL

must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

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(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ ~~district court~~ GENERAL fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

Section 4. Section 3-15-205, MCA, is amended to read:

"3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the

issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county ~~general~~ ~~district court~~ GENERAL fund."

Section 5. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court or jury commissioner. The court or jury commissioner WITH THE APPROVAL OF THE COURT must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313 ~~or 3-15-507~~."

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(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the ~~clerk--of--the--court~~ jury commissioner for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the ~~clerk-of-the court~~ jury commissioner, who shall transmit it to the court. The court or jury commissioner WITH THE APPROVAL OF THE COURT may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

~~(3)--A-person-may-also-be--excused--from--jury--service upon--presentation-of-his-excuse-to-the-court-as-provided-in 3-15-507.~~"

Section 7. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must

specify the number of jurors to be drawn, ~~and-the~~ The time at which the jurors are required to attend~~,-which--time--may~~ must be at ~~the-same-term-in-which-the-jurors-are-drawn-or-at the-next-succeeding-term,-in~~ the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

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"3-15-507. Clerk to call list of jurors summoned and prepare ~~capsules~~ ballots. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and ~~the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313(1)~~ not excused.

(2) The ~~clerk shall write the~~ names of the jurors present and not excused must be written on separate ballots, ~~fold the ballots so that~~ with the names concealed, and ~~place them in black capsules. In the presence of the court, the~~ The clerk shall deposit the ~~capsules containing the~~ ballots in a box large enough to hold all of the ~~capsules~~ ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ~~capsules~~ ballots from the box is unable to see the ~~capsules~~ ballots he is about to draw. ~~The box must be kept sealed or locked until ordered by the court to be opened.~~"

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"7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

~~(2) exemption from jury duty;~~

~~(3)~~ (2) exemption from military duty except in case of war, invasion, or insurrection."

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"7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must

receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military ~~and jury~~ duty.

(3) Each certificate entitles the holder to exemption from military ~~and jury~~ duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates."

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"25-7-202. Judge <u>or jury commissioner</u> to draw ~~capsules containing~~ ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge <u>or jury commissioner</u> in the presence of ~~the clerk of the court~~ <u>two witnesses</u> must openly draw out of the trial juror box as many of the ~~capsules containing~~ ballots with the names of jurors thereon, one after another, as are sufficient to form a jury <u>for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.</u>"

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draw at random a ~~capsule--containing--a~~ ballot with the juror's name thereon ~~through-an-aperture--made--in--the--lid large-enough-only-to-admit-his-hand-conveniently-and-without said-judge-gazing-into-said-box-before-or-while-drawing-said capsule.~~ Upon stipulation of counsel, the court may order the clerk to draw ballots."

Section 16. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the ~~district-judge~~ jury commissioner shall, pursuant to an order of the court to be entered in the minutes, in the presence of ~~the-clerk-of-the court~~ two witnesses, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified under an order made as prescribed in this section, the court may make another order or successive orders until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and

notified. He is subject to the same exceptions and challenges as any other trial juror."

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"25-7-208. ~~Capsules---containing--ballots~~ Ballots of jurors who have been sworn. The ~~capsules--containing--the~~ ballots with the names of the jurors so sworn must be then deposited in another box and there kept apart from the other ~~capsules-containing~~ ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ~~capsules-containing-the~~ ballots with the names of the jurors thereon must be returned to the box from which they were first taken."

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Section 19. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county ~~jury commission~~ commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within

the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as

all of the defendants."

~~Section 20. Section 82-1-304, MCA, is amended to read:~~

~~"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.~~

~~(2) No trustee or attorney fees may be paid from the trust proceeds.~~

~~(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.~~

~~(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.~~

~~(5) The trustee shall invest funds under his management in the manner of a prudent man, as defined in 72-21-104. Fifty percent of the interest earned on each trust shall be credited to the general district court fund of the county in which the mineral interest is located to defray the costs of administration.~~

~~(6) Funds held in the trusts are subject to the~~

1 ~~provisions--governing--abandoned-property-contained-in-title~~

2 ~~70,-chapter-9.~~"

-End-

SENATE BILL NO. 194

INTRODUCED BY AKLESTAD, ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; ~~PROVIDING--FOR--PAYMENT--OF WITNESS-EXPENSES-AND-THE-COSTS-OF-IMPANELING-A-JURY-FROM-THE DISTRICT--COURT--FUND;--REQUIRING--PAYMENT--OF--PART--OF-THE INTEREST-ON-THE-TRUST-FOR-UNLOCATED-MINERAL--OWNERS--TO--THE DISTRICT--COURT--FUND;~~ AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, ~~3-15-205,~~ 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, ~~AND-82-1-304,~~ MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors" ~~Certificates~~ Warrants", which must contain the blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank ~~certificates~~ warrants and ~~stubs--to--be--filled~~ copies as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route)."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' ~~certificates~~ warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a ~~certificate~~ warrant taken from a book containing a ~~stub with like designations~~ carbon copy of the same, signed by the clerk ~~under--seal~~, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ ~~district--court~~ GENERAL fund."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. Duties of clerk as to jurors. (1) The clerk

REFERENCE BILL

CORRECTED

must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a ~~certificate taken from a book containing a stub with a like designation~~, warrant signed by himself ~~under seal~~, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such ~~certificate~~ warrant to the county treasurer, the amount specified in the ~~certificate~~ warrant must be paid out of the ~~general~~ ~~district court~~ GENERAL fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

~~Section 4. Section 3-15-205, MCA, is amended to read:~~

~~"3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the~~

~~issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county general district court GENERAL fund."~~

Section 4. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court or jury commissioner. The court or jury commissioner WITH THE APPROVAL OF THE COURT must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313 ~~or 3-15-507~~."

Section 5. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused -- affidavit to claim excuse. (1) The court or jury commissioner WITH THE APPROVAL OF THE COURT shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the ~~clerk--of--the--court~~ jury commissioner for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the ~~clerk-of-the court~~ jury commissioner, who shall transmit it to the court. The court or jury commissioner WITH THE APPROVAL OF THE COURT may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

~~(3)--A-person-may-also-be--excused--from--jury--service upon--presentation-of-his-excuse-to-the-court-as-provided-in 3-15-507.~~"

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(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as

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~~(6) Funds held in the trusts are subject to the~~

1 ~~provisions governing abandoned property contained in Title~~

2 ~~70, chapter 9.~~"

-End-

SIGNED: 04/20/83, CHAPTER 594

SB 191 -- BLAYLOCK -- TO FREEZE THE BASE RENTAL RATE FOR STATE-OWNED GRAZING LANDS AND TO PROVIDE FOR A STUDY TO DETERMINE AN APPROPRIATE RENTAL RATE FOR SUCH LANDS; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.
BY REQUEST OF: THE DEPARTMENT OF STATE LANDS

INTRODUCED: 01/18/83
REFERRED TO SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION: 1/18/83
HEARING: 1/31/83
DIED IN COMMITTEE

SB 192 -- BLAYLOCK, HAND -- TO PROVIDE THAT THE MINIMUM CROP SHARE RENTAL FOR AGRICULTURAL LEASES ON STATE LAND IS 30 PERCENT OF THE ANNUAL CROP ....
BY REQUEST OF: THE DEPARTMENT OF STATE LANDS

INTRODUCED: 01/18/83
REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 01/18/83
HEARING: 01/31/83
DIED IN COMMITTEE

SB 193 -- CONOVER, NORMAN -- PROVIDING THAT CURRENT MEDICAL PRACTICE MUST BE REFERRED TO IN DETERMINING STANDARDS FOR USE OF MEDICATION ....

INTRODUCED: 01/18/83
REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY: 01/18/83
HEARING: 01/28/83
REPORT: 02/01/83, DO PASS
2ND READING: 02/03/83 AYES: 50; NAYS: 0
3RD READING: 02/05/83 AYES: 46; NAYS: 0

TRANSMITTED TO HOUSE: 2/5/83
REFERRED TO COMMITTEE ON HUMAN SERVICES: 02/07/83
HEARING: 3/9/83
DIED IN HOUSE COMMITTEE

SB 194 -- AKLESTAD, ROUSH -- TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; SPECIFYING THE DUTIES OF THE CLERK OF DISTRICT COURT ....

INTRODUCED: 01/18/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/18/83
HEARING: 01/28/83
REPORT: 02/03/83, DO PASS, AS AMENDED
2ND READING: 02/05/83 AYES: 47; NAYS: 0
3RD READING: 02/08/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/8/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/09/83
HEARING: 3/16/83
REPORT: 03/22/83, BE CONCURRED IN
2ND READING: 03/23/83, BE CONCURRED IN AYES: 66; NAYS: 1
3RD READING: 03/25/83, BE CONCURRED IN AYES: 92; NAYS: 4

RETURNED TO SENATE: 3/25/83

TRANSMITTED TO GOVERNOR: 03/31/83
SIGNED: 04/05/83, CHAPTER 379

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1983

The twentieth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 2, 1983 at 10:05 a.m. in Room 331, State Capitol.

ROLL CALL: All members were present.

The Chairman announced that the Committee was ready to consider executive action on several bills previously heard.

FURTHER CONSIDERATION OF SENATE BILL 155: Senator Berg moved that SB155 DO NOT PASS. The Chairman reviewed the intent of the bill and the problems addressed by its proponents. A letter was received from the Highway Department which provided the information requested by the Committee at the January 26 meeting (See Minutes, January 26, for letter). It was the concensus of the Committee that the problem the proponents of SB155 are facing is federal in nature; however, it was agreed that something should be done to help these people. The Chairman suggested amending the bill to change its application from the "contiguous owner" of the property for sale to "the people in the same position as an original owner or successor in interest." Senator Berg withdrew his motion and the bill was referred to staff counsel for researching the proposed amendment.

ACTION ON SENATE BILL 179: Since there is currently a House bill pending which better deals with the conflicts between the antidiscrimination and nepotism laws, Senator Crippen moved to TABLE SB179. This motion passed unanimously.

ACTION ON SENATE BILL 194: Counsel distributed copies of the proposed amendment to the Committee for review. Senator Mazurek pointed out that Section 20 of the bill allocates mineral interest earned on trust for unlocatable mineral interest owners to be credited to the district court fund rather than the county general fund. The Committee felt this section should be striken in its entirety. Senator Mazurek then moved the proposed amendments along with this deletion which passed unanimously. Senator Brown moved SB194 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 236: Counsel distributed copies of the amendment as proposed and the Committee discussed the reasons for adding rebuttable presumption. They felt this would expand on the property to be forfeited. Senator Mazurek questioned the language referring to burden on lending institutions. After reading the amendment further it was found that the later language clears up this question. It was also pointed out that

section 44-1-102 as referred to in number 4 of the amendment should be changed to 44-12-102. Senator Mazurek then moved to adopt the amendments. This motion passed unanimously. Senator Crippen moved that SB236 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 201: Chairman Turnage referred the Committee to the letter written by Judge Harkin which summed up the intent of this bill. Senator Shaw moved that SB201 DO PASS. This motion carried with Senator Crippen voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 203: The Committee agreed that the intentions of this bill are good; however, they felt that the bill, as worded, would prevent a judge who was defeated during an election from serving. Action was therefore deferred so that this fact could be taken into consideration.

ACTION ON SENATE BILL 218: Senator Crippen moved that SB218 DO PASS. Senator Berg inquired as to the definition of "disturbed or inebriated" as referred to in the bill. The Committee agreed that these words would give the sheriff some discretionary latitude. The motion for a DO PASS recommendation was then voted on and passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 248: John Maynard of the Attorney General's Office, distributed a handout which explains his position on the bill (Exhibit "A"). This information had been requested by the Committee at the January 31 hearing. It was the concensus of the Committee that the bill was not acceptable for passing; however, there were some provisions which needed saving. The 90 day review of fitness to proceed and provision which allows the state to raise this issue were decided to be important. It was also agreed that it is necessary to correct the reference to section 10, which had been incorrectly referred to as section 9 by the past legislature. Counsel questioned if the Committee intended to include a provision for disposition of highly dangerous people who were unfit for further criminal proceedings. The Committee advised they felt a provision of this nature is necessary and referred the bill to counsel for work.

ACTION ON SENATE BILL 196: The Committee was concerned with the automatic cost-of-living adjustment provision of this bill. They felt that if this was passed for the court reporters, other county and city employees would request the same. The salary increase as proposed was again discussed. Senator Crippen suggested reducing the minimum base salary to $16,000 since their overall increase in salary is approximately 30%. Senator Halligan moved the adoption of the above. This motion passed unanimously. The Committee also felt that "for purposes of perfecting an appeal" should be deleted from page 4, line 5,

so as to eliminate any question of whether the reporter would prepare the appeal transcript for other purposes. The Committee also thought the wording which ties the transcript rates to the U.S. judicial conference rates should be deleted. Senator Berg moved to adopt these proposals. This motion passed unanimously. Senator Crippen then moved that SB196 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 220: The Committee discussed the Department having the authority to approve restoration of good time. It was agreed that this authority should remain with the Department and that the bill was acceptable as drafted. Senator Crippen moved that SB220 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 225: The Committee reviewed the bill and the effects of increasing the time period for holding a voluntary committal an additional five days. Senator Berg moved SB225 DO PASS. This motion carried with Senators Halligan, Mazurek and Crippen voting in opposition.

FURTHER DISCUSSION OF SENATE BILLS 23, 37 and 41: The Committee reviewed the intent of the proposed bills and amendments. It was their understanding that the major intent is to promote the streamlining of the water adjudication program. The constitutionality of giving the powers of a district court to a water judge was discussed. The Committee also expressed concern over giving the water courts administrative review powers. Taking jurisdiction from the district courts and putting it solely with four water judges was also a concern. Senator Galt suggested that Judge Lessley should be contacted so as to refresh the Committees' memories as far as his reasoning for some of these requests. It was agreed that action should be deferred until Judge Lessley has been contacted.

FURTHER CONSIDERATION OF SENATE BILL 26:

The Committee reviewed testimony from the January 21 hearing and concurred that they should try to act accordingly. It was agreed that Ravalli County should continue to be included in the 4th Judicial District and that Lake and Sanders Counties should be severed to create their own 20th Judicial District. Senator Shaw moved to amend SB26 accordingly. This motion passed unanimously.

Senator Daniels moved to delete Stillwater and Carbon Counties from the 6th Judicial District and to include these counties with Yellowstone in the 13th Judicial Districts, as suggested at the January 21 hearing. This motion passed with Senator Berg voting in opposition. The Committee agreed that the issue

of the new judge would be dealt with in a later portion of the bill. Senator Berg expressed concern for the caseload on the one judge in the 6th Judicial District.

The effects of adding Meagher, Wheatland, Gold Valley and Musselshell Counties to the 10th Judicial District were discussed. The Committee agreed that it would be to their best interests to be included in the 14th Judicial District since Ravalli would be included with the 4th District. Senator Berg moved to amend the bill so as to keep the 10th and 14th Judicial Districts as they are now. This motion passed unanimously.

The Committee then dealt with Section 2 of the bill which distributes the judges. Senator Berg moved to delete the 6th and 10th Districts from subsection (1). This motion passed unanimously.

Senator Berg moved to delete the 13th District from subsection (3) on page 3, line 10 and to create a new subsection (4) which would allocate five judges to the 13th District. This motion passed unanimously.

Senator Daniels moved to strike Section 3 in its entirety and to renumber accordingly. This motion carried unanimously. Senator Berg moved to strike Sections 5 and 6 in their entirety as there was a constitutional question as to limiting the term of judges to less than six years. This motion passed unanimously. Senator Mazurek felt that the termination provision should be eliminated and could foresee problems with effective dates and assigning of hold-over judges. The Committee felt that the Supreme Court should make the assignment. The bill was then referred to counsel and Steve Brown, who consented to work further on the bill.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:57.

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-2-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes

MONTANA'S INSANITY DEFENSE AND SB 248

LINES OF ACCOUNTABILITY

TRADITIONAL VERDICTS WITHOUT ALLEGATION OF MENTAL DISEASE OR DEFECT	NOT GUILTY			GUILTY
PRE-1979	NOT GUILTY	NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT RENDERING DEFENDANT "UNABLE TO APPRECIATE CRIMINALITY OF HIS CONDUCT OR CONFORM HIS CONDUCT TO REQUIREMENTS OF LAW"		GUILTY
CURRENT LAW	NOT GUILTY	NOT GUILTY BY REASON OF LACK OF MENTAL STATE	GUILTY BUT UNABLE TO APPRECIATE CRIMINALITY OF CONDUCT OR TO CONFORM CONDUCT TO THE REQUIREMENTS OF LAW.	GUILTY
	DISPOSITION: DISCHARGE	DISPOSITION: 46-14-301	DISPOSITION: 46-14-311	DISPOSITION: Title 46, ch. 18
GUILTY BUT INSANE	NOT GUILTY	GUILTY BUT INSANE		GUILTY
GUILTY BUT MENTALLY ILL	NOT GUILTY		GUILTY BUT UNABLE TO APPRECIATE CRIMINALITY OR TO CONFORM CONDUCT	GUILTY
SB 248 - GUILTY BUT SUFFERING FROM MENTAL DISEASE OF DEFECT	?			

EXHIBIT "A"
February 2, 1983

EXHIBIT "A"
February 2, 1983

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

215 N. SANDERS, JUSTICE BUILDING, HELENA, MONTANA 59620
TELEPHONE (406) 449-2026

MEMORANDUM

TO: SENATE JUDICIARY COMMITTEE

FROM: JOHN MAYNARD
Assistant Attorney General

DATE: 2 February 1983

RE: SENATE BILL NO. 248

Senate Bill 248 is an act to generally revise the laws relating to a claim of mental disease or defect in criminal proceedings and provides for a verdict of "guilty but suffering from a mental disease or defect at the time of the offense." There are provisions within the bill that should be enacted because they clarify areas of the law for which some clarification is needed. However, other portions of the bill make changes that are not needed and should not be made.

On page 1 of the bill, line 16, the phrase "and judgment" should be retained. On page 2 of the bill, lines 1 through 8 should be retained and the language which is added, "the jury may return a verdict of guilty but suffering from a mental disease or defect at the time of the offense," should be struck.

The attempt to include in Montana's law a verdict of guilty but suffering from mental disease or defect at the time of the offense initially suggests one of two common approaches to the insanity defense utilized in other states. Neither of the alternatives is consistent with abolishing the defense to the extent permitted by the Constitution, the apparent intent of the 1979 Legislative Assembly.

In the first instance if a verdict of guilty but suffering from mental disease or defect is included in Montana law to permit a finding of guilt without proving the intent element of the crime, the verdict would be unconstitutional under the Fifth and Fourteenth Amendments. It would relieve the State of its

EXHIBIT "A"
February 2, 1983

constitutional burden of proving every element of the crime charged beyond a reasonable doubt.

In the alternative approach a verdict of guilty but suffering from mental disease of defect requires that a standard other than the standard currently provided in Montana law must be applied to defendants raising the issue of their state of mind at the time they committed the offense. In states which have adopted this approach to the guilty but mentally ill verdict the American Law Institute standard of accountability is required. That standard states that a person is not responsible for criminal conduct if at the time of committing the offense "he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Readopting that standard in Montana would be a step backward and would raise the problems that the 1979 law sought to resolve.

The amendment on page 2 line 13 including the county attorney among those who can raise the issue of the defendant's fitness to proceed, should be retained. In a number of instances defense counsel have refused to raise the issue of a defendant's fitness to proceed thereby using the issue for leverage in the plea bargaining process.

The next amendment, page 3 beginning at line 4 through line 11, addresses a potential problem with the constitutionality of our current fitness to proceed law and adequately remedies that problem. The United States Supreme Court has held that indefinite commitments based on unfitness to proceed violate due process. Jackson v. Indiana, 406 U.S. 715, 730 (1972).

Turning to page 4, the amendments referring to a verdict of guilty but suffering from mental disease or defect should be deleted and the current provisions in the law should be retained. The amendment on line 18 of page 5, amending the 1979 session law, clarifies an issue that has been raised in these types of proceedings relative to a typographical error that was made during the conference committee process during the 1979 legislative session.

On page 6, lines 18 and 19, the sections suggested for repeal should be retained. Section 46-14-102, MCA, provides that the only evidence that is relevant at the guilt phase of a trial involving an issue of mental disease or defect excluding responsibility is whether "the defendant did or did not have a state of mind which

EXHIBIT "A"
February 2, 1983

is an element of the offense." This statute precludes a defendant from offering the oftentimes confusing testimony of psychiatrists and psychologists relating to whether or not he appreciated the criminality of his conduct or was able to conform his conduct to the requirements of law. By narrowing the scope of the inquiry in such proceedings to cognitive, as opposed to volitional matters, the Legislature abolished the traditional insanity defense. Now the only instances in which a person might be successful in raising the defense in Montana are those instances in which the state of mind which is an element of the offense charged cannot be proved beyond a reasonable doubt.

Following some discussion with Senator Towe and Harold Hanser, Yellowstone County Attorney, I understand the major concern underlying SB 248 to be the dispositional alternatives contained in sections 46-14-301 though 46-14-304, MCA. However, those statutes only apply to a defendant who is found "not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged." If the State does not prove a state of mind that is an essential element of the offense charged it has not sustained its burden of proving every element of the crime charged beyond a reasonable doubt.

Usually, in cases where the state has not proven its case beyond a reasonable doubt, a defendant is entitled to be released. However, if he raised the issue of mental disease or defect affecting state of mind the court can order the defendant committed to the custody of the superintendent of Warm Springs state hospital if the defendant cannot be released without danger to others. Following this committment the burden of proof is on the defendant to show that he may be safely released. As another alternative in cases where a defendant is found not guilty by reason of lack of mental state, the county attorney can seek civil commitment as provided in Title 53, chapter 21, MCA. In any event, the defendant need not be released absent a judicial determination that it is safe to release him.

Against this backdrop, there appears to be no reason to adopt a verdict of "guilty but suffering from a mental disease or defect at the time of the offense."

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 194

Aklestad

Respectfully report as follows: That Senate Bill No. 194

introduced bill, be amended as follows:

1. Title, lines 7 through 11.
   Following: "COURT;"
   Strike: the remainder of line 7 through "FUND;" on line 11.

2. Title, line 15.
   Following: "25-7-209,"
   Insert: "AND"

3. Page 2, line 21.
   Strike: "district court"
   Insert: "general"

4. Page 3, line 12.
   Strike: "district court"
   Insert: "general"

(continued on page 2)

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 236

Crippen

Respectfully report as follows: That Senate Bill No. 236

introduced bill, be amended as follows:

1. Title, line 6.
   Following: "LAWS;"
   Insert: "TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;"

2. Title, line 8.
   Following: "44-12-102,"
   Insert: "44-12-203 THROUGH"

3. Title, line 9.
   Strike: "44-12-205,"

(continued on page 2)

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

Y.C.

Re: SB236 February 2, 19 83

4. Page 3.
Following: line 16
Insert: "Section 2. Section 44-12-203, MCA, is amended to read:

"44-12-203. ~~Procedure~~ Presumption -- procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.

~~(1)~~ (2) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court ~~shall hear evidence on the charge of unlawful use of the property and~~ upon motion ~~may~~ must order the property forfeited to the state.

~~(2)~~ (3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure."

Section 3. Section 44-12-204, MCA, is amended to read:

"44-12-204. Proof required or permitted at hearing. ~~(1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.~~ In order to rebut the presumption of forfeiture: (1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged.

(2) an owner of property listed in 44-12-102(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent.

~~(2)~~ (3) A a claimant of a security interest in the property who has a verified answer on file ~~may~~ must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner,

(continued on page 3)

Chairman.

STATE PUB. CO.
Helena, Mont.

purchaser, or person in possession of the property when it was brought to such person.""
Renumber: subsequent sections

5. Page 3, line 20.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner,"

6. Page 3, line 23.
Following: "charged,"
Insert: "and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner,"

7. Page 4, lines 14 through 23.
Strike: subsection (b) in its entirety.
Renumber: subsequent subsections

AND AS AMENDED
DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 218

Van Valkenburg

Respectfully report as follows: That Senate Bill No. 218

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

J.C.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 201

Turnage

Respectfully report as follows: That Senate Bill No. 201

(Introduced Bill)

DO PASS.

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

H.C.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 196

VanValkenburg

Respectfully report as follows: That Senate Bill No. 196

introduced bill, be amended as follows:

1. Title, line 5.
   Strike: "AND FOR AN ANNUAL COST OF LIVING INCREASE"
2. Page 1, line 16.
   Strike: "$18,000"
   Insert: "$16,000"
3. Page 1, line 19 through line 6 on page 2.
   Following: "works." on line 19.
   Strike: line 19 through "years." on line 6 on page 2.
4. Page 4, line 5.
   Strike: "For the purpose of perfecting an appeal"
5. Page 4, lines 9 through 11.
   Strike: "or at the maximum" on line 9 through "greater" on line 11.

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

JC.

February 2, 1983

5. Page 4, line 11.
   Following: "commissioner"
   Insert: "with the approval of the court"

6. Page 4, line 19.
   Following: "commissioner"
   Insert: "with the approval of the court"

7. Page 5, line 5.
   Following: "commissioner"
   Insert: "with the approval of the court"

8. Page 13, line 23.
   Strike: Section 20 in its entirety.

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 2, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 220

Daniels

Respectfully report as follows: That Senate Bill No. 220

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

y/.c.

STANDING COMMITTEE REPORT

February 2, 1983

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 225

Daniels

Respectfully report as follows: That Senate Bill No. 225

(Introduced Bill)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

N.C.

MINUTES OF JUDICIARY COMMITTEE
March 16,1983

The meeting of the House Judiciary Committee was called to order in room 224A of the capitol building, Helena, Montana by Chairman Dave Brown. All members were present, including Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 394

SENATOR BOB BROWN, District 10, stated that this bill allows a person sentenced to death to choose between hanging and a lethal injection; Montana is one of the four jurisdictions in the English-speaking world that still hangs its condemned prisoners; this bill also requires that the execution take place in the penitentiary rather than under the jurisdiction of the county sheriff in the county where the crime was committed; and he stated that it had some retroactive provisions amended in, so that it would apply to those who are sentenced to death at this time.

CHRIS TWEETEN, Assistant Attorney General, said that he was appearing on behalf of JOHN MAYNARD, who prepared written testimony, which was presented to the committee. See EXHIBIT A.

There were no further proponents and no opponents.

CURT CHISHOLM, Deputy Director of the Department of Institutions, said that this bill affects them directly in terms of being ultimately responsible for the execution of inmates; plus it changes the method of execution; it changes the designation of place of execution from the county in which the trial was heard; it changes the person responsible for supervising the execution from the sheriff of the county of conviction to the warden of the Montana State Prison; and it allows the warden to designate an official executioner. He indicated that the position of the department is that they support the method of execution proposed in this bill; but, because it is a burdensome responsibility, they would just as soon avoid the warden being responsible for the supervision of the execution; and in relation to the place of execution, he felt it made sense to have a centralized place or facility to accommodate the execution itself, especially if they are considering an execution by a chemical substance.

He continued that they do support the ability of the warden to designate and select an executioner - the one who would actually perform the act itself.

SENATOR BROWN said that every state in the nation, with the exception of Montana, does have the warden of the state prison carry out this task, if it has the right of capital punishment; and they do not expect this burden to be placed at the county level.

REPRESENTATIVE JAN BROWN wondered why on page 8, line 9, there had to be twelve witnesses. SENATOR BROWN replied that he did not know why, but they probably had to have some witnesses.

REPRESENTATIVE JAN BROWN asked if it would be difficult to find somebody or to train somebody to administer the injection and wondered if they have a problem with this in other states. MR. TWEETEN responded that there are people who are medically trained, but who are not physicians, who have the expertise that is required to perform this service and that registered nurses can administer continuous intravenous injections along with medical technicians, paramedics; and persons who have received medical training in the service are most commonly the ones who perform this type of service.

SENATOR BROWN commented that he could answer this no better, because their experience with death by lethal injection is extremely limited, but he would rather have a paramedic, a registered nurse or someone like that give a lethal injection, than have the county sheriff try to execute the person by hanging.

REPRESENTATIVE CURTISS asked if they know how many executions have taken place recently. SENATOR BROWN responded there was an execution in Texas just recently and several states have opted for the lethal injection and the state of Washington has already done what this bill proposes.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 194

SENATOR AKLESTAD, District 6, stated that they hoped this bill would help the clerks of the district courts by eliminating the capsule in selecting the jurors and amending the exemptions from jury service.

MARGE JACKSON, Clerk of the District Court in Glacier County and chairman of the Legislative Committee of the Montana Clerks' of the Court Association, testified that the clerks would like this bill passed because they feel that the changes requested will help them streamline their duties in regard to jury selection and save the taxpayers' dollars too. She presented to the committee copies of comments on amending sections of the jury selection law. See EXHIBIT B. She also gave a demonstration of how hard it is to use these ballot capsules.

KAREN BROWN, Clerk of the Court in Teton County, stated that she was in support of this bill; that their district judge was responsible for four counties; and he is not always available to draw jury panels. She also indicated that, the way the law is now, he is the one that has to excuse the jurors and it is really a hassle to get in touch with the judge to excuse the jurors.

ROBERT LAVA, Clerk of the District Court in Pondera County, exclaimed that they have worked hard to make it convenient for them and efficient for the office with no problems for anybody else. He said that he would like to see this bill pass.

There were no further proponents and no opponents.

SENATOR AKLESTAD advised the committee that all they were trying to do is make the system more efficient and more economical for the counties.

REPRESENTATIVE ADDY noted that the bill had been amended in section 6 to allow the jury commissioner to excuse jurors with the approval of the court; he received one piece of mail from Mr. Phillips, expressing concern about allowing jury commissioners to excuse jurors, because that is probably the most burdensome thing about jury selection; and he wondered if anyone had talked to the judges since this language was added. SENATOR AKLESTAD

replied that he had not - the amendment was put on in the Senate Judiciary Committee; and he believed that it was optional and the judge would have to give his permission. MS. JACKSON explained that they did amend that and that was because some of the judges felt that they would rather do it themselves; it is very inconvenient when the judge does not reside in the county; and there are always emergenicies. She advised that in selecting the panel, they could excuse jurors with a doctor's slip just as well as the judge could.

REPRESENTATIVE ADDY asked if they were saying that the judge could just write a blank check to the clerk of the court to allow him or her to choose who is excused or who is not excused from jury duty; or the other possibility would be that people would call in with excuses; and a list would be made of that and recommendations would be made individually. SENATOR AKLESTAD said this was how he understood the bill.

REPRESENTATIVE EUDAILY noted in section 6 on page 5, lines 12 through 14, this language is in reference to 3-15-507 and has been deleted; then on page 7, lines 21 to 23, this refers to 3-15-313 and it is deleted again; and he asked if they are taking away the ability to be excused, because it is deleted in both cases. SENATOR AKLESTAD responded that they did take away the ability to be excused in at least one area. MS. JACKSON expanded by saying that 3-15-313 was not considered here; it is still exactly the same as that was changed in the 1981 legislature; and they didn't change it at all.

REPRESENTATIVE EUDAILY indicated that they have striken subsection 3 on page 5. MS. DESMOND said that she cannot indicate why that language was striken, but on the bottom of page 4, subsection 1, it states "the court or jury commissioner shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person", so there is still language in the statute that would take care of this.

REPRESENTATIVE EUDAILY contended that that was existing language and also subsection 3 was exisiting language, so why do they need to take subsection 3 out of there. SENATOR AKLESTAD replied that he did not have an answer for that.

CHAIRMAN BROWN indicated that he has had about six phone calls from judges around the state, who are very adamently opposed to this bill and he wondered if the Senator had talked to any of these judges since the Senate took action on it. SENATOR AKLESTAD responded that he has not had any direct communication with the judges.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 7

SENATOR AKLESTAD, District 6, stated that this was a unique bill in that it permits a defendant that is sentenced to death and does not have a prescriped length of time in his sentence to be confined at the state prison at state expense. He indicated that in the state of Montana, under existing law, if an individual is sentenced to death, the county in which he was sentenced, still has to pay the board and the room and any major medical costs for that individual, who is incarcerated in the state prison. He advised the committee that right now they have one prisoner in Pondera County, Duncan McKenzie, and the county has a contract with the state of Montana so that they pay so much per day to the state for his incarceration.

REPRESENTATIVE UNDERDAL, District 12, testified that the McKenzie trial was first held eight years ago; the cost presently is probably in excess of $30,000.00; and he presented to the committee a copy of information that was obtained from the Attorney General's office in connection with this case. See EXHIBIT D.

REPRESENTATIVE ROUSH, District 13, Cut Bank, stated that he supported this bill; that there are presently three people on death row now and there are other cases pending in Pondera County and other counties in Northwest Montana.

REPRESENTATIVE CURTISS, District 20, said that this was one of the recommendations that came out of the joint subcommittee on judiciary and it is through no fault of the county that their security is such that they can't take care of these prisoners and it is only fair that the state assume this responsibility.

JO BRUNNER, representing herself, stated that she wants to support this bill; she is speaking as a taxpayer and a concerned citizen; and she feels very strongly that this is not the responsibility of the county to pay for the room and board of a person, who is traveling through that county, commits a crime and then they have to continue to pay for eight to ten years; and this did not seem very equitable.

CURT CHISHOLM, Deputy Director for the Department of Institutions, stated that they rise as a proponent in this piece of legislation simply because the fiscal impact on the state of Montana is almost negligible. He explained that typically, when they receive inmates on death row, they not only have a sentence of death, but they have a timed sentence for related offenses; and, therefore, this would automatically make them the responsibility of the Department of Institutions. He advised the committee that the inmate from Pondera County who is facing death has only this one sentence and, therefore, he is their responsibility under existing law.

WALTER HAMMERMEISTER, Sheriff of Pondera County, stated that they naturally support this bill; Pondera County has paid or owes $30,539.10 in the McKenzie case; the total cash outlay, which would include this $30,000.00 is in excess of $157,000.00; and the money that has gone into this in time and labor probably exceeds that figure two or three times over that amount.

There were no further proponents. There were no opponents.

SENATOR AKELSTAD said that there was really a flaw in the law and he hoped the committee would pass this bill and rectify this inequity.

REPRESENTATIVE ADDY noted that they were paying $10.00 a day to the prison to house this prisoner and he asked what was their actual cost. MR. CHISHOLM responded that it is about $33.00 a day; that the contract has not changed since it was negotiated back in 1975.

REPRESENTATIVE ADDY asked what the medical costs were. MR. CHISHOLM replied that the inmate in question here attempted suicide about two or three years ago and he required medical attention. He explained that this was born by the county as that was part of the contract.

REPRESENTATIVE BERGENE asked if there was another appeal pending for Mr. McKenzie. CHRIS TWEETEN, Assistant Attorney General, replied that there is at least one more appeal pending, if not more than that.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 2

SENATOR AKLESTAD, District 6, stated that this was a bill which deals with prohibiting appellate review of alleged errors not objected to during a criminal trial. He presented to the committee a petition signed by taxpayers, who supported this type of legislation. See EXHIBIT E. He indicated that the main thrust of the bill is to cut down on the abuse of the appeal system.

CHRIS TWEETEN, Assistant Attorney General for the state of Montana, offered prepared testimony prepared by JOHN MAYNARD, who could not appear on this date. See EXHIBIT F.

MARC RACICOT, Prosecution Coordinator for the County Prosecutor Services of the Department of Justice, said that he was appearing for the county attorneys and the primary reason they were in favor of this legislation is because the constant review and reexamination of these cases is eating up their resources. They feel that there is never a final decision ever made.

REPRESENTATIVE UNDERDAL, District 12, said that the continuous appeals of those under the death sentences have caused frustration by the law-abiding citizen, especially when the appeals are based, not on the question of guilt, but on technicalities.

JO BRUNNER, representing herself, said that she believed the appeal system is grossly misused and gave two examples in which she was involved in cases where they were appealed on technicalities.

REPRESENTATIVE CURTISS, District 20, testified that the interim committee spent many long hours trying to determine some ways to tighten up the appeals system and they found in their study that it is not the judiciary system itself that is the problem; it is not the law; the problem is in human error; and by use of the appeal system, the litigants are capitalizing on human error.

There were no further proponents.

BILL LEAPHART, representing himself and the American Civil Liberties Union, indicated that his objection to this bill is that it will allow the appeal court, under certain situations, to overlook jurisdictional defects. He contended that the Montana Supreme Court has not gone so far as to say that these defects can be overlooked is because that goes to the very heart of the judiciary - the power that the court has - either the court has the power or the court does not have the power; and it is a well-accepted legal principle that a jurisdictional defect cannot be overlooked.

There were no further opponents.

SENATOR AKLESTAD said that they have heard some innuendos, but he would hope that this committee would look through the smoke and see the trees and the trees, in this case, are the people that they are representing; and the people of this state are very concerned about the abuses to the appeal systems. He emphasized that they are not wanting to take the appeal system away from the people, but they are just trying to tighten it up.

REPRESENTATIVE KEYSER asked if the language on page 2, lines 4 through 16 did not basically handle any legitimate problems with an attorney who did not represent his client the first time and any legitimate appeals. MR. RACICOT replied that, in his view, yes and in the view of all the people who worked on this in the subcommittee on judiciary for many months.

CHAIRMAN BROWN inquired if it was not true that after more thorough research through the records after the trial that a question will come up that is not necessarily due to the caginess of the counsel during the course of the trial. MR. RACICOT replied that he felt that occurs, but it is a rare occasion and if it is so substantial, it is going to reflect on the effectiveness of the counsel, this bill allows this on page 2, lines 13 through 16.

CHAIRMAN BROWN indicated that he thought that in some parts of this bill they are penalizing clients for having ineffective counsel. MR. RACICOT replied that he can understand that viewpoint, but he does not see it that way.

REPRESENTATIVE JENSEN asked Mr. Tweeten if he would acknowledge that there are different levels of competence among attorneys in general. MR. TWEETEN replied certainly.

REPRESENTATIVE JENSEN asked if this was true with defense attorneys particularly. MR. TWEETEN responded certainly.

REPRESENTATIVE JENSEN questioned if it is possible that someone on the less competent end of that scale would without being intentionally devious not raise an objection to an error. MR. TWEETEN responded that he did not want to give the impression that all defense attorneys are devious; he felt that, in many cases, when a defect is not objected to during the trial, the attorney may have overlooked it; but there certainly are cases where the defense attorney does try to deceive the court.

REPRESENTATIVE JENSEN inquired that, if that attorney honestly overlooked an error and after the trial upon consideration or review, he realizes this error and it reflects on poor or incompetent representation, is this attorney likely to raise that error. MR. TWEETEN responded

that he felt it depended to a great extent on what kind of error it is and to the extent on which it reflects on the attorney's competence; that he personally has argued appeals wherein an attorney has requested that the court not hold against the defendant the counsel's incompetence. He also indicated that there are many cases wherein the the attorney prosecuting the appeal is not the same attorney that tried the case.

REPRESENTATIVE JENSEN wondered in those situations where the same attorney is involved and there is an error that would reflect against that attorney, who, in fact, raises that there was an error; if the attorney does not raise that error, would the defendant have the ability to recognize that there was an error. MR. TWEETEN answered that he would not; that is why the bill allows for the consideration of this kind of a problem by affording collateral review.

REPRESENTATIVE JENSEN asked who raises that. MR. TWEETEN responded that the defendant would have the option of raising it himself; if he is sent to prison, the jail house lawyer could point this out to him and he could write on this matter; or if he has money, he could retain another attorney.

REPRESENTATIVE JENSEN asked if there is some guarantee here that that individual won't be denied an appeal on the basis of a real error. MR. TWEETEN answered that no there is no quarantee that he is going to be able to raise that issue: and if the individual is not perceptive enough to recognize that the attorney has been ineffective, he is not going to raise that issue.

REPRESENTATIVE BERGENE commented that she generally is in support of this bill but she is troubled about the possibility of the unconstitutionality of it. MR. TWEETEN replied that the bill incorporates standards for review and to this extent they can assume that it is constitutional.

REPRESENTATIVE CURTISS noted on the bottom of page 1, lines 24 and 25, the language reads "substantial rights" and she wondered what this would mean. MR. TWEETEN responded that this would mean any constitutional defect, i.e. erroneous rulings involving certain seizures issues, etc.

REPRESENTATIVE CURTISS asked if it was his considered opinion that a person's constitutional and substantial rights would still be protected under this bill. MR. RACICOT replied yes.

CHAIRMAN BROWN indicated that he was always mindful, when he went to the doctor, that half of them graduated in the bottom half of their class, and he viewed lawyers in the same light. He wondered, in the discussions that led to this bill, if there was concern about competency of counsel and what that would do to the rights of the defendant. SENATOR AKLESTAD replied that it was brought up during the interim by some of the individuals; he felt that they have taken care of all the aspects that they possibly could; and that the individual is being protected as much as possible and still have a bill. He emphasized that he hoped they did not get hung up on technicalities, when the vast majority of the people in the state of Montana are concerned and feel that something has to be done.

There were no further questions and the hearing on this bill was closed.

SENATOR AKLESTAD indicated that REPRESENTATIVE KEYSER would carry the bill on the floor of the House.

EXECUTIVE SESSION

SENATE BILL 7

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion. The motion carried with all voting aye.

The committee took a break at 10:25 a.m. and reconvened at 10:45 a.m.

SENATE BILL 394

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE CURTISS seconded the motion.

REPRESENTATIVE BERGENE stated that she both supports the bill and opposes it; the thing that bothers her is the responsibility they are placing on the warden to make that decision; he will have to supervise that whole thing; she talked with Mr. Chisholm and he asserted that this would make a terrible difference as far as the attitude of the inmates to the warden and she felt that one of the protections to the warden is the way the inmates view that warden.

REPRESENTATIVE JENSEN informed the committee that in Billings, they have put together a gallow that is available for use around the state and he sure hates to interfere in free enterprise by having this bill and he indicated that they could vote how they want to, but he is going with the marketplace.

REPRESENTATIVE KEYSER said that he can see where the Department of Institutions is coming from and he can see how the warden feels, but that it just makes sense that the prison is where this should take place - this man is in prison; he is there; they are talking about taking a very dangerous criminal, transporting him clear across the state of Montana back to the county in which he was tried, etc., and then somebody there has to take the responsibility of this and this could have a reflection on the sheriff and the prisoners he has.

REPRESENTATIVE JENSEN noted that Mr. Chisholm's comment was that it should take place at the prison, but the question was if the local sheriff should supervise it at the prison and thereby relieve the warden and the internal administrators of that problem.

REPRESENTATIVE DARKO said the thing that bothers her is there are two options and she felt that if they are looking for a human way to do this, why leave hanging in the law.

REPRESENTATIVE DAILY indicated that he felt just the opposite of Mr. Chisholm, i.e., that if they were to execute

a prisoner or two at the Montana State Prison, then maybe again the warden and guards could start running the prison and the prisoners might have a little more respect for the warden, especially if he pulled the rope.

REPRESENTATIVE BERGENE stated that she felt the volume of the prison population would make that difference between the sheriff setting up the execution in the prison as opposed to him and that would make a little difference.

REPRESENTATIVE JENSEN commented that, as he recalls, there is no gallows at the prison; that they can't hang somebody down there. REPRESENTATIVE KEYSER noted that there were tourist gallows.

REPRESENTATIVE HANNAH indicated that in Yellowstone County they put gallows up, they take them down and there is a lot of wasted man hours there and there was a waste of time of the volunteer group who built the gallows. He felt sure that they would have citizens in Deer Lodge, who would be more than happy to volunteer their time and material to do the same; and would save counties around the state the expense and hassle of finding other concerned citizens to do that.

REPRESENTATIVE ADDY affirmed that this was the right location to do this, if it has to be done; in 1952, the last prisoner was sentenced to death; he was subsequently retried in Havre; there was a great debate over where they were going to have the hanging; and they did not want to stigmatize any place where people had picnics or other events. He said that he has problems with the bill just because it gives a more human alternative to capital punishment; he would hate for them to be desensitized to the fact that they are discussing putting someone to death; that he would like to maintain hanging as one of the alternatives that the state will adopt unless the prisoner choses another alternative; he has some problems with the bill, but he thought he could vote for it.

REPRESENTATIVE CURTISS commented that if the sheriff is required to do this, he is going to have to live with that for a long time; and the people in the smaller communities are not going to forget that either. She felt that the state prison is the place for it and is as impersonal as it can be.

REPRESENTATIVE EUDAILY indicated that he had a problem with the bill on page 8, lines 15 through 17, wherein it authorizes a pharmacist to dispense such drugs to the warden, without prescription; he did not understand, if a doctor is available to the prison, why they would not have the doctor prescribe these drugs; he thought that there might be a problem where the designee might be getting getting these drugs for use for something else.

CHAIRMAN BROWN thought this relates to the oath that doctors take.

REPRESENTATIVE IVERSON noted that the type of drugs you are talking about here are not the type that people would buy for dispensing for sale in the prison as these are fast-acting lethal drugs.

REPRESENTATIVE EUDAILY said that he was sure in the codes, there is a section that says a pharmacist must have a prescription to issue drugs and he wondered if they amended that section. MS. DESMOND said that she thinks he is right and she will try to find that section.

REPRESENTATIVE DARKO commented that they had a bill in Human Services Committee that would allow the Humane Society to administer a drug without the veterinarian's O.K. and it was killed on that very same reason in the Senate.

REPRESENTATIVE JAN BROWN indicated that the injection itself concerns her; if she had to administer an I.V., she would not like to think of herself as an executioner; and on T.V., they had two solutions running in and they had two people dumping the components in so neither knew who administered the actual lethal dosage.

REPRESENTATIVE JENSEN noted that there could be medical problems with a lethal injection, i.e. if someone is resisting the injection by muscle contraction, this presents some problem as it does make it difficult to administer.

CHAIRMAN BROWN felt this was no great problem. He suggested that they leave this bill for awhile to allow Ms Desmond to check out the problem on the pharmacist.

SENATE BILL 194

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JAN BROWN.

CHAIRMAN BROWN pointed out that he has had calls from six judges in the state who do not like this bill as well as three clerks of the court who do not believe that the change should be made from the judge to the clerk of the court.

REPRESENTATIVE JENSEN commented that the problem they have here is one of control and some judges want to retain that maximum amount of control; one problem is that judges are doing more than judging - they are administrating; they are not trained to be managers and some time we are going to have to move away from this and let judges judge and managers manage.

REPRESENTATIVE ADDY indicated that he had received a letter from Judge McPhillips of Shelby and his concern was that the question of whether a juror should be excused or not is a fairly delicate question; that it is easier for the judge to withstand buddyness or the "good friend" syndrome than the clerks; but this letter was predicated before the amendment "with the approval of the court" was adopted. He felt that there were two ways for the court to give this approval; (1) the judge could give blanket approval if he thought it was appropriate or (2) there could be a tenative list of everyone who has requested an excuse; and he felt that a judge who had great reservation about giving this discretion to the clerk could limit the amount of control.

CHAIRMAN BROWN informed the committee that he read that amendment to all six judges and they all indicated that, as far as they were concerned, they would not relinquish that control to the clerks of the court.

REPRESENTATIVE CURTISS asked if the term "jury commissioner" is statutorily provided for.

REPRESENTATIVE RAMIREZ asserted that one of the problems they have right now is that it is too easy to get excused from jury duty and, as a result, they end up with juries, that, in his view, are not a cross-section; they do not represent the full spectrum of the community

because there are too many people getting excused. He felt this would make it easier to get excused rather than more difficult; he thought it should take almost a death in the family for someone to get out of jury duty or they are going to lose their job, but anything short of that, he did not think they should be excused.

REPRESENTATIVE HANNAH commented that the reason they don't have good juries is the fault of the judges in letting people off; one of the main jobs in a trial is for the attorneys to try and weed out as many people as they can who do not feel have an open mind on the case and get them out of there; and he did not know if there was as big a problem as Representative Ramirez thinks there is.

REPRESENTATIVE SPAETH indicated that he did not think they should make it any easier for people to get out of jury duty; he did not think the group should be stacked ahead of time; they could end up with a jury of nine housewifes and three postal workers; and this is not right. He continued as far as the ballot capsules is concerned, he thought it was a silly system they have now and no matter what they do with the other part, they should keep that ballot part in there.

REPRESENTATIVE JENSEN said that the question of a jury makeup is a real concern to a lot of people and asked if Representative Ramirez was going to amend this.

REPRESENTATIVE RAMIREZ replied that they might go a little beyond the bill if they did that; he would propose that they amend out the part that permits the jury commissioner to excuse and put back the status quo; then maybe address that next time. He stated he would like to move that concept and have Ms. Desmond come up with the precise language.

CHAIRMAN BROWN suggested that they work on this and come back to it the first part of next week.

REPRESENTATIVE FARRIS noted that it might be, especially in counties where the judges are not residents of that county, that the jury commissioners might be stricter;

the people could call up thinking that the judge doesn't know me and he will buy this excuse and get excused that way where if they are known to the jury commissioner, they could be stricter.

REPRESENTATIVE KEYSER thought that the language says that this has to be done with the consent of the judge; that is the way they do it now; he advised that he had a bill four years ago to try and toughen the jury exemptions so people could not be exempted so easily (he thought it passed one House and not the other); it was a very extensive bill; then to come in with this bill that deals with another issue and try to get in with as complex a bill as that bill was that this just wouldn't work.

REPRESENTATIVE ADDY commented that he agreed with Represenative Farris.

CHAIRMAN BROWN indicated that they would hold this and work on the amendments.

SENATE BILL 394

MS. DESMOND indicated that she found this section and she was not certain which schedule this drug was in - either 2 or 3 - but they could put language in saying, "except as provided in this act, no dangerous drug in whichever schedule could be dispensed without a prescription". She commented that as it stands now a pharmacist could refuse to issue the drug.

REPRESENTATIVE EUDAILY moved that they amend this bill appropriately to cover this matter. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE SEIFERT seconded the motion.

The motion carried with REPRESENTATIVE JENSEN, REPRESENTATIVE DARKO, REPRESENTATIVE VELEBER and REPRESENTATIVE BERGENE voting no.

CHAIRMAN BROWN advised that the committee will not be meeting on Thursday and Friday; and on Monday, they will have four bills.

REPRESENTATIVE KEYSER moved that the meeting be adjourned at 11:21 a.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 16, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 7

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A DEFENDANT SENTENCED TO DEATH TO BE CONFINED AT THE STATE PRISON AT STATE EXPENSE PENDING EXECUTION; AMENDING SECTION 46-19-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 7

BE CONCURRED IN

~~BE XEX~~

DAVE BROWN,
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 394 DATE March 16, 1983

SPONSOR SENATOR B. BROWN

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Chris Tweeten	Helena	Attorney General	✓	
[illegible]				
Carolyn Curtis		Dist 20	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

Exhibit A
3/16/83
SB 394

SENATE BILL NO. 394

TESTIOMONY OF JOHN H. MAYNARD,

ASSISTANT ATTORNEY GENERAL

Senate Bill 394 provides an alternative method of execution to hanging by providing for lethal injection at the election of the defendant. The bill goes on to provide that the place of execution is the State Prison, as opposed to what is currently the law, the county in which the defendant was convicted. Finally, the bill provides for retroactive application and an immediate effective date. SB 394 is based on the similar laws in Oklahoma, Texas, New Mexico, Idaho, Washington, Massachusetts, and Utah.

Montana is one of only two states that retains hanging as its exclusive method of execution. While hanging was the predominant form of execution in the United States in the 19th century, it has been supplanted over the years by electrocution, the gas chamber and by lethal injection. Because Montana is one of the last states to retain hanging, the issue has arisen in our capital cases of whether hanging constitutes cruel and unusual punishment. A recent Washington case, State v. Frampton, 627 P.2d 922 (1981),

details the evidence that opponents of hanging have presented in support of their claim that hanging does violate the constitutional prohibition against cruel and unusual punishment. Passage of Senate Bill 394 would effectively eliminate that issue from Montana's three capital punishment cases, thereby obviating the need for an evidentiary hearing on the issue by any of the courts that may be presented with that claim. Senate Bill 394 also eliminates the security risks that accompany the transporting of a death row inmate from the state prison to the county in which he was convicted. Executions which take place in counties present local facility security risks in addition to the transportation risks. Finally, SB 394 concentrates any expertise in terms of conducting executions and eliminates the possibility of any political exploitation of a sensitive issue.

A number of common objections raised to provisions like those contained in Senate Bill 394 do not on balance, outweigh the reasons to pass the bill. Some have argued that the place of execution should be near the place at which the crime was committed. However, this is not the case under current law. Each of Montana's death row inmates were tried in counties other than the counties in which they committed their crimes. Another objection that has been raised is that conducting an execution at the prison would create security risks and necessarily involve prison personnel.

The fact is that the prison is probably the most secure site within the state and that any persons involved in the conducting of the execution would remain anonymous.

Another objection to changing the method of execution at this time is that it might raise an ex post facto issue in current cases, thereby extending what has already been a very lengthy process. However, when balanced against the possibility of an evidentiary hearing being granted on the issue of whether hanging constitutes cruel and unusual punishment, any claim regarding lethal injection that might be raised could be handled very expeditiously. Significant authority has upheld its constitutionality and its applicability to persons originally sentenced, particularly in the state of Texas prior to its adoption as a form of execution in that state. Ex parte Granviel, 561 SW.2d 503 (1978); Dobbert v. Florida, 432 U.S. 282 (1977). Finally, objections have been raised by physicians because of their inability, by virtue of the hippocratic oath, to participate in an execution by lethal injection. However, other persons are qualified and trained in Montana and in other parts of the country to give intravenous injections. That list of people would include persons who have served as medics in the service, emergency medical technicians, and para medics in the State of California. Others could and have been trained. The number of persons who could administer a

lethal injection should also be considered against the number of persons who have participated in or conducted hangings. The claim is made in Montana's cases that there are no experienced hangmen in this country at all. For the foregoing reasons, adopting this form of execution and this place of execution in Montana are important.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 194 DATE March 16, 1983

SPONSOR SENATOR AKLESTAD

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
K.A. Humphrey	Stanford	Clerks of Court	X	
Margaret Shaw	Dillon	✓ ✓ ✓	X	
Marjie Jackson	Cut Bank	✓ ✓ ✓	X	
Ruth Sharone	Great Falls	myself	X	
Rep. G. Rush	Cut Bank	myself	X	
Florence McGlynn	Great Falls	Clerk of Court	X	
Karen Brown	Choteau, Mt.	Clerks of Court	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

WITNESS STATEMENT

Name Margie Jackson

Committee On

Address Cut Bank, Mt.

Date 3/16/83

Representing Glacier Co.

Support X

Bill No. SB 194

Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Exhibit A-1
SB 194
3/16/83

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

For the Record, my name is Margie Jackson, Clerk of District Court from Glacier County, and chairman of the Legislative Committee of the Montana Clerk of Court's Association.

The Clerks very much appreciate the efforts of Senator Akelstad and Representative Roush in sponsoring this bill for us because we feel the changes requested will help us streamline our duties with regard to jury selection and save taxpayer dollars too.

Basically, this bill was worked on by 4 Clerks, one from a small county, 1 from a medium county, and 2 from large counties so we feel it is going to be workable for courts in all counties.

I do not want to take a lot of your time going through this whole bill so I prepared a handout with a few comments on each section and a short explanation of the changes made, so you can look this over at your convenience.

It might be helpful if you bear in mind as you are reading this bill, that there are 3 different times that a drawing is made when a jury is selected. So along with my comments I have designated which drawing it is.

The first drawing is for the main panel, which usually serves for one year. Usually 150 to 1000 names are drawn, depending on the size of your county, and how often you expect to use your jurors.

The second drawing is for a panel to sit on a specific case. Usually 35 to 50 jurors are drawn from the main panel, again depending on how many the judge thinks he will need.

The third drawing is done in the courtroom to pick the order in which the jurors are seated. For instance the first name drawn takes juror box #1, and so on.

The statutes now provide for using capsules in the 2nd and 3rd drawings. At one time we didn't use them but there were some changes made in the 1981 legislative session on jury selection and I think they got put back in then. I don't know if it was an oversight or not. Anyway capsules are very time consuming and inefficient.

We have prepared a little demonstration on this for you and I am going to ask Kathryn Humphrey, Clerk from Judith Basin County, to show you why we want the capsules removed from the statutes.

Exhibit B SB194
3-16-83

3-5-510
3-5-511
3-15-204
3-15-205

These four sections are mostly houskeeping in nature. Certificates to the treasurer are no longer used by the court, and with the modern means of paying jurors, such as with computers and peg board systems you don't use the old checks with stubs. Also when the 6 mil levy came in the jurors are paid out of the district court fund instead of the general fund.

3-15-312
3-15-313

Both these statutes are changed to provide that the Jury Commissioner shares the duties of excusing and discharging jurors as set forth by statute. It's a routine matter to excuse an unqualified juror or one that presents a medical excuse. The jury commissioner can take care of this. The jury commissioner can usually take care of emergency excuses but jurors have a way of coming up with a lot of phony excuses and the jury commissioner feels it is best for the Judge to take care of that. If the duty is shared it would be more convenient and save the judge some time. Something he has precious little of. This change would be especially helpful to counties where the judge is not in residence and the jurors find him hard to reach to ask for an excuse.

3-15-501

This applies to the First Drawing. The way this section is written now the court is required to call in the entire panel at the beginning of the jury term. The entire panel may consist of 150 to 1000 persons, depending on the size of the county and you pick your panel to act for 1 year. The jurors may be needed for just one case, thus you would need only 12-13 jurors, but you would still have to pay each of these 150 to 1000 jurors for reporting. We feel that if the court has the discretion to summon jurors as needed there would be a savings of tax dollars.

3-15-502

Jury Commissioner and Clerk are synonymous. We need to be able to appoint a deputy to take care of these duties if the Clerk is not available or as in the larger counties where they have more than one courtroom.

3-15-505

This applies to the First Drawing. In this section the Supreme Court was to designate a form to give notice to jurors. They authorized the Clerks to use whatever form they desired, so we thought it unnecessary to keep this in. Jury Questionnaires have always been distributed to jurors at the request of the various district judges although they carry no statutory weight. The questions asked on the jury questionnaire allows the court to determine in advance if the person is qualified to act as a juror. Questions such as age, citizenship, residency requirements, etc. are asked. Qualifying a jury by questionnaire is much cheaper than calling the jurors in and paying them to answer in person the same questions as appears on the jury questionnaire.

3-15-507

Eliminates use of capsules in the drawings. Capsules are very time consuming and inefficient. We have substituted the word ballots for capsules so if any court desires to continue using capsules nothing in the change would preclude them from doing so anyway. Yet those courts that do not wish to use capsules would not be required to.

B

7-33-2314
7-33-2315 The 1981 Legislature passed a bill removing all exemptions for jury duty. The statute exempting fireman was overlooked. These two changes simply conform the statutes to comply with the intent of the 1981 legislation.

25-7-202 This is the 2nd drawing made for a panel to sit on a specific case. It provides that the drawing be made by either the Judge or the Jury Commissioner. In counties where a Judge is not in residence it is often difficult and inconvenient for the Judge to come up just to make a drawing. To preserve the anonymity of jurors it is provided that the drawing be made in the presence of two witnesses. If counsel for both sides so stipulate jurors selected in this drawing may be seated in the order drawn. This eliminates the 3rd drawing in the courtroom. Alot of the attorneys like this because they know in advance which jurors are going to be in the first 24 seats.

25-7-203 The only change here is eliminating capsules for ballots.

25-7-204 This refers to the 3rd drawing, which is done in the courtroom. Sometimes the Judge prefers to have the Clerk do the drawing so provision is made for this. This drawing would be eliminated if counsel stipulated to have them pre-picked as provided in Section 25-7-202, and this saves the court time, too.

25-7-206 This drawing is conducted during the trial if you find you have an insufficient number of jurors present. If it is provided that the jury commissioner do the drawing the court can instruct him to do so and remain on the bench while the jury commissioner gets more jurors to come in.

25-7-208
25-7-209 The only changes in both these statutes would be in the elimination of capsules for ballots.

46-17-202 The list of registered voters, which is where you get the main panel of jurors from, is prepared by the Clerk & Recorder and the County Commissioners. In this statute they are referred to as the Jury Commission and there has been some confusion with that and Jury Commissioner. The change would merely eliminate the confusion.

82-1-304 The Clerk of Courts are the trustees under this section and since it already provides that 1/2 of the interest earned on the trust be used to defray the costs of administration it should be credited to the district court fund rather than the general fund.

March 16, 1983:

Exhibit C
SB194
3-16-83

RE: S.B. #194, Jury Selection Bill:

House Judiciary Committee
DAVE BROWN, Chairman
KELLY ADDY, Vice Chairman
and
ALL COMMITTEE MEMBERS;

In support of the above bill I will deal with Section 10, which refers to 3-15-507, MCA.

This section deals with the drawing of jurors in the courtroom on the day trial begins. Paragraph (1) the word ballots has been substituted for capsules. Ballots are less cumbersome to handle and eliminate an unnecessary cost when additional capsules are needed. The section on excuses is eliminated, at this point all excuses should have been heard and any excuses for cause will be covered in voir dire of the prospective jurors.

Paragraph (2), names of jurors on ballots with the elimination of capsules. Also, eliminates the phrase "in the presence of the Court." At this point all jurors present can be assumed to be qualified jurors without legitimate cause for excuse, it saves time and confusion to have their names in the box before going into Court. The paragraph goes on to the type of box for drawing names for the seating of jurors for the trial. I hope this demonstration will show why we feel the anonymity of jurors can be preserved just as well with ballots as it can be with capsules.

Respectfully submitted by:

Kathryn A. Humphreys
Clerk of District Court
Judith Basin County
Stanford, Mt. 59479

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 7 DATE March 16, 1983

SPONSOR SENATOR AKLESTAD

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Walter L. Hammermeister	Conrad	Pondera Co. Sheriff	X	
Rep. G. A. Rorsh	Cut Bank	Dist. 13.	X	
Rep Melvin Underdal	Shelby	Dist 12	✓	
Judge Curtis	Dist 20		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name Walter L. Hammermeister

Committee On Judiciary in House

Address Conrad Mont

Date March 16, 1983

Representing Pondera County Sheriffs office

Support Yes

Bill No. S.B. 7

Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. As of today in one specific case I am aware of Pondera Co has paid $30,539.10 for Board & Room & medical expense of one prisoner while the prisoner has been confinned in Mont. State Prison.

2. This S.B 7 can be a concern and benefit to every County in Montana.

3. Approximately 2 weeks of the Sheriff of Lake County was expressing an approving interest in the Passage of S.B. 7 as they had a convicted person awaiting sentence - that the sheriff was hopeful of getting an execution sentence (the convicted person ended up by receiving an approximately 130 years sentence.)

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 2 DATE March 16, 1983

SPONSOR SENATOR AKLESTAD

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Chris Tweeten	Helena	Attorney General	✓	
Walter L. Hammermeister	Conrad	Sheriff	✓	
Rep. G. Ronsik	Cut Bank	H. Dist #13	✓	
Rep Melvin Underdal	Shelby	H Dist 12	✓	
Bill Leaphart	Helena	ACLU		✓
Carolyn Curtis		Dist 20	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SB2
Exhibit D

3-16-83

Following is information obtained from the Attorney General's office:

STATE VS. MCKENZIE

Date of Offense	1-21-74
Date of Conviction--District Court Jury Trial	2-01-75
Appeal submitted following argument before Montana Supreme Court	9-03-76
Decision issued	11-12-76
Rehearing denied	1-10-77
Judgment vacated and care remanded by United States Supreme Court	6-27-77
Case re-submitted following argument before Montana Supreme Court	3-13-78
Decision issued	6-07-78
Rehearing denied	7-25-78
Judgment vacated and case remanded by United States Supreme Court	6-25-79
Case re-submitted following argument before Montana Supreme Court	10-29-79
Decision issued	2-26-80
Rehearing denied	3-31-80
Certiorari denied by United States Supreme Court	12-08-80
Filed for post-conviction relief	1-07-81
Denied	2-27-81
Appealed to Montana Supreme Court	3-03-81

This is where the case stands at this time.

SB2

Exhibit E

Conrad, Montana
March 20, 1981

3-16-83

Senator Aklestad
Montana State Capitol
Helena, Montana 59601

Dear Senator Aklestad:

We the undersigned wish to support your efforts to plug the holes to limit the number of appeals that the tax payer must pay for as reported in the Independent Observer issue of March 19, 1981 under the title "Its time to quit making a mockery out of the McKenzie Case". Anything you can do to end this will be appreciated.

Name	Address
Martha Copenhaver	306 Horizon Lodge, Conrad Mt.
Keith B Copenhaver	" "
Doris E Keil	509 " "
Edna Hoetitler	511 Horizon Lodge Conrad
Myra Cardwell	301 Central Conrad
Geo. Zier	
Roger Moan	6 North Front Conrad, Mt.
Silver Mellinger	216 Horizon Lodge Conrad, Mt.
William Lutz	
Charlotte McAdam	Horizon Lodge # 412
Lannie C. Milam	Horizon Lodge 106
Eva Hale	#410 Horizon Lodge Conrad, Mt.
Steve Kovatch	"
Ruth J. Wenzel	
Mrs A Mae Dean	Horizon Lodge #301 104
Clara F. Yeager	405 Horizon Lodge Conrad Mt.
Mr. & Mrs. A. E. Sperleder	apt. 506 Horizon Lodge " "
Howard V. Alley	Horizon Lodge apt 213 Conrad Mt
Mary Kirk Alley	Horizon Lodge #213 Conrad Mont 59425
Pearl Bowman Eklund	Horizon Lodge Box 313 Conrad Mont 59425
Oscar Eklund	Horizon Lodge #313 - Conrad Mt.
Doris Dunnes	Horizon Lodge Box 518 - Conrad Mt. 59425 Montana 59425
Florence M Walston	Horizon Lodge Conrad Mont.
Lillian Krueger	219 Horizon Lodge Conrad, Mont 59425
Blanche Moritz	406 Horizon Lodge, Conrad, Mt. 59425
Mike Mont	" " "
Gladys Pourroy	212 Horizon Lodge Conrad Mt 59425
Harry Yeager	215 Horizon Lodge Conrad Mont 59425
Alvin P. Boetitz	413 " " " " "
Eva Weikum	401 Horizon Lodge Conrad Mont.
Olga Swanson	Horizon Lodge, Conrad Mont

Name	Address
Estella C. Letson	#403. Horizon Lodge. Conrad, Mont. 59425
Oscar Berland	Horizon Lodge Room 404
Minnie Berland	Horizon Lodge Room 404
Ethel L. Seifert	Horizon Lodge Room 504 " "
Alice M. Fockler	Horizon Lodge Room 205
David Vos	Horizon Lodge 310
Jessie Shay	Horizon Lodge 411 A
Anne Baumgardner	Horizon Lodge 312
Lettie Thomas	" " 101
Kathryn H. Tracy	Horizon Lodge Room 202
Nina Berland	Horizon Lodge Room 214
Alba Miles	Horizon Lodge Room 309
Geo. Zier	Horizon Lodge apt. 311
Marie Klemenhagen	1000 4th S.W. Conrad, Mt.
Olive Wheaty	Conrad,
Gladys M. Pourroy	Conrad, Mont 212
Louise Kingsbury	Horizon Lodge 206
Barbara Wolverton	Conrad Mont.
Wilma Coldwell	Conrad, Mt. 59425

TESTIMONY OF JOHN H. MAYNARD

ASSISTANT ATTORNEY GENERAL

SENATE BILL 2

HOUSE JUDICIARY COMMITTEE

MARCH 16, 1983

Exhibit F
SB2
3-16-83

Senate Bill 2 was suggested to the joint subcommitte on the judiciary because of our experience in capital cases, Sandstrom v. Montana, and numerous subsequent appeals and petitions for post-conviction relief. The bill applies only to criminal appeals.

Section 46-20-702, MCA, currently contains two sentences.

> 46-20-702. Types of errors noticed on appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the trial court.

The first sentence sets a standard for reviewing alleged errors on appeal. Errors not found to be "prejudicial to substantial rights" are disregarded. This is commonly cited by our Supreme Court as the statutory basis for "harmless error." The second sentence speaks of jurisdictional or constitutional rights and permits the Montana Supreme Court to review those errors regardless of whether the alleged error was objected to at trial. This is commonly referred to as "plain

error." Taken as a whole, the statute is vague and elastic in application and needs clarification by the legislature. The bill reaches beyond the Montana Supreme Court, however, and into federal court review of state court convictions.

When enacted in 1967, the purpose of this section, modeled after Illinois law, was to permit a problem to be settled in state court rather than in federal court. Fifteen years later, however, the statute simply means that the error can first be reviewed in state court and then in federal court. It is because of the absence of a contemporaneous objection provision in our law that virtually all claims must be fully litigated in both forums.

Because of the burden on federal courts, restrictions have been established with respect to which claims can be brought to their attention in federal habeas corpus actions. Those cases include Wainwright v. Sykes, 433 U.S. 72 (1977); and Engle v. Isaac, 102 S. Ct. 1558 (1982). Montana cannot avail itself of these well founded rules, however, because of inconsistent application of our contemporaneous objection requirement in case law and the existence of a rather ambiguous plain error rule. The bill is based on a congressional habeas corpus bill developed by Florida Attorney General Jim Smith. Subsequent to its development the United States Supreme Court decided Engle v. Isaac elaborating

on Wainwright v. Sykes, and further spelling out the concerns involved in contemporaneous objection policies. Wainwright addressed piecemeal litigation, sandbagging claims, and "planting error," the ultimate defense tactic of questionable ethics. This bill permits the state court to review every issue and more than a federal court must review in light of Engle v. Isaac. In order to bring an error to the attention of a federal court or, under this bill, in state court, where the error has not been objected to, a defendant must demonstrate cause for his failure to object and prejudice resulting from his failure to object. These are the principles of Wainwright v. Sykes, and Engle v. Isaac. They inject finality in criminal proceeding, which under the current state of the law in Montana is impossible to achieve.

Senate Bill 2 does not mean that an individual cannot appeal his conviction. It does not mean that he cannot raise any issue that he wishes to raise on appeal. It simply means that the trial court must have the opportunity, in the first instance, to correct the alleged error and permit the trial to proceed. This fairness in relation to the state and state court system enhances justice and encourages active defense by encouraging the quick identification of alleged error and resolution at the time an error is alleged.

MINUTES OF THE JUDICIARY COMMITTEE
March 22, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 9:07 a.m. in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

EXECUTIVE SESSION

SENATE BILL 237

REPRESENTATIVE JENSEN moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE BERGENE.

CHAIRMAN BROWN passed out copies of proposed amendments that were discussed with Senator Halligan. He said that Senator Eck was here relating to her bill, SB 391, in case there were any questions that the committee wished to ask.

REPRESENTATIVE CURTISS indicated that she had some real problems with one of the remarks that was made yesterday wherein she said that they are now making a profit off that program for Cascade County, and she did not understand how they could be making a profit if the restitution is to be made to the victims of the crime, how they could have anything left over for the county.

REPRESENTATIVE JENSEN replied that he asked them and they said that they were making a little on short term interest; when they receive funds before the distribution of those funds, they accrue some money in those funds for a few days and they are interest-bearing funds and that is the only excess revenue that they have. He said that he did not get any figures from her, but apparently it is not all that much money. He felt that if they were going to have some money sitting in a bank account, they should draw some interest.

REPRESENTATIVE BERGENE stated that this reduces the cost that the county has.

REPRESENTATIVE CURTISS wondered if this bill mandates that one of these restitution officers be set up in all of these counties. She noted that they were apparently able to do that in some of the counties now, but she wanted Ms. Desmond to resond to this.

MS. DESMOND replied that her interpretation of the bill is that it does not affect the county's authority to set up a county restitution program especially with the amendments that Senator Halligan proposed, which say the supervision of the restitution may be done by any other designated person. She thought this would mean that the county could have someone else do it, such as a clerk in a J.P. court.

REPRESENTATIVE FARRIS indicated that she did not understand the amendments on pages 3 and 4; there are other kinds of restitution than cash; the Voluntary Action Program in Great Falls has a whole program wherein people, who do not have money and don't want to go to jail, can do public service; and she did not know if this bill addresses that kind of thing or not. She wondered why close the door to other kinds of restitution,

MS. DESMOND responded that she thought it was because this bill only deals with restitution to the victim; and that restitution, under the existing law, could include those things they are talking about.

REPRESENTATIVE FARRIS felt that this changes the existing language - this doesn't change anything else; on lines 14 and 16 on page 3, she noted that it crossed out "or other restitution: and "or performs"; and she wondered if this was not already existing language. MS. DESMOND replied that this is existing language in this bill, but that is not existing language in 46-18-201.

REPRESENTATIVE FARRIS said that this whole bill is all new language then. The response was yes.

REPRESENTATIVE JENSEN stated that there are a couple attorneys' opinions; he did not know if there was an attorney general's opinion or not, that muddies the water. He explained that the judge will order someone to do some work to provide for restitution; then someone came up with the idea that if that were the case whereby employment was being forced on someone, then the county would have to pick up all the costs of that employment, such as unemployment insurance, workmen's compensation, etc.; and the Missoula County Attorney wrote an opinion that said yes, the county was responsible for any injury that might

arise to the worker out of any of his work done by the order of the court. He contended that there were a couple of counties - he thought Kalispell and one other - that were not willing to pay that money so they cannot assign someone to do the work.

REPRESENTATIVE FARRIS exclaimed that this was involuntary servitude.

B. LESLIE VINING, Senate Aide to Senator Eck, stated that in many of the smaller counties they do not have all these individuals to do the work and she explained the proposed amendments to the committee.

REPRESENTATIVE JENSEN commented that the last amendments refer to a bill that has already passed, which lengthens the time someone has to pay.

REPRESENTATIVE HANNAH moved the adoption of these amendments. The motion was seconded by REPRESENTATIVE CURTISS. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

SENATE BILL 391

CHAIRMAN BROWN explained that the basic difference between these two bills is that this bill applies to all sentences, while Senator Halligan's bill applies to suspended or deferred sentences. He passed out amendments that were proposed for this bill. See EXHIBIT B.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE BERGENE moved that the amendments be adopted. REPRESENTED FARRIS seconded the motion.

MS. VINING explained that on page 12, lines 3 through 25, this is the original language that is in the codes now except for two areas: in subsection (ii) where it says, "jail time not exceeding 90 days" is changed to 180 days to

conform with the bill that was just passed; and subsection (v) is added, which says "payment of costs of confinement". She noted that there was also a subsection that was not included on page 12, line 19, which stated "(vii) payment of costs of court appointed counsel as provided in 46-8-113." She said that what the amendments are actually doing are retaining all of the original language in the codes with the exception of increasing jail time to 180 days and adding "payment of costs of confinement" and the rest of the bill would be deleted.

CHAIRMAN BROWN said that this basically reinserts the bottom of page 11 and all of page 12.

REPRESENTATIVE HANNAH questioned why are they doing this. MS. VINING replied that she did not know why, but Senator Eck felt that there was some language, which she and the Senate Judiciary thought was necessary, but there was not enough time to amend it; she later went through the bill; found the important parts and she thought that this should be included within this section of codes.

REPRESENTATIVE DAILY questioned on page 12, lines 22 through 25 and on page 11 if the Senate Judiciary Committee struck that language or was this the original part of the bill. MS. VINING replied that the underlining of "must and" and "shall require restitution" were the amendments that Senator Eck originally wanted put in the bill and the Senate Judiciary Committee did not feel that the "must" should be in there and so deleted the whole thing. Senator Eck felt that this was an important part of the bill and she wants to put in the original with those amendments.

CHAIRMAN BROWN said that what they basically have is the existing statute; by striking it, the Senate left the existing statute as it is on the books and what Senator Eck wants to do is just take that piece of statute that is on pages 11 and 12 and put it back in the bill and amend it as she has proposed on the sheets.

REPRESENTATIVE JENSEN asked why it was effective on passage and approval. REPRESENTATIVE KEYSER said that he had a note to change it. REPRESENTATIVE ADDY said that if they strike the effective date, it will be effective October 1.

The motion carried with REPRESENTATIVE HANNAH, REPRESENTATIVE KEYSER, REPRESENTATIVE RAMIREZ, REPRESENTATIVE CURTISS, REPRESENTATIVE DAILY and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE ADDY moved to amend the bill by striking Section 9 on page 21, lines 20 and 21, which is the effective date. REPRESENTATIVE KEYSER seconded the motion.

The motion carried unanimously.

REPRESENTATIVE EUDAILY noted that on page 21, they have struck the repealer section too and he wondered if that is what they wanted to do. He said if you don't repeal them, they are back in the statutes.

REPRESENTATIVE ADDY explained that section 46-8-114 provides the time and methods of payment of costs and 46-8-115 describes the effect of non-payment of costs and he thought that it would be consistent with the philosophy of restitution to leave those in.

CHAIRMAN BROWN said that we also do not need the codification section.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE FARRIS seconded the motion.

REPRESENTATIVE CURTISS said that there were a lot of bad things in this bill; she believed in restitution, but this doubles the penalties; and that it makes felonies out of misdemeanors. REPRESENTATIVE ADDY replied that it does the opposite - if you stole $300.00 today, you would be guilty of a felony and if you pass this bill, you will be guilty of a misdemeanor.

REPRESENTATIVE RAMIREZ said that he would like to speak against this bill, too; because he thought $150.00 should be changed as the dividing line between misdemeanors and

felonies, but he did not like $500.00. He continued that they could steal for $500.00 or less and only commit a misdemeanor things such as a television set, a microwave oven, etc., and he thought that $500.00 was extremely high and this would also be true as far as writing checks; a person could write a check for $499.00, which is quite a healthy bad check and he would be guilty of only a misdemeanor. He indicated that he could not support that high a figure.

REPRESENTATIVE ADDY asserted that what Senator Eck is trying to do with this bill is move some of the district court caseload into justice court; in doing this the maximum fine is $500.00 and the maximum confinement is 6 months and in order to speak to the high limits here, she has also inserted all these alternatives such as restitution so that justice court with the maximum fine and the maximum confinement would still do justice to the case with restitution alternatives. He thought this was the philosophy of the bill and was what Senator Eck was trying to do.

REPRESENTATIVE BERGENE said that she had a concern about the bad check as well because she wants to be sure that while they are battling to put the "shall" language back would the conference committee have any kind of conflict with this where it says "may".

REPRESENTATIVE IVERSON commented that he felt there was more to it than just a bad check problem; it seemed to him that they have removed any incentive not to steal $450.00 because chances are all that is going to happen to you is that you will have to pay it back; and those odds are pretty good.

REPRESENTATIVE FARRIS declared that it just amazed her in reading the statistics column in the Great Falls Tribune wherein somebody writes a bad check for $29.00; goes to jail for 6 weeks and has to have a bond for $250.00. She thought this would seem as though writing a bad check was the worst possible, heinous crime and she felt it was all out of proportion for a $29.00 bad check. She stated that she understood that people were not prosecuted for the first bad check.

REPRESENTATIVE SPAETH said that he thought that Senator Eck was trying to move it from the district court to the justice court system to help relieve the caseload; and in the real world, the check for $455.00 is not going to go to Deer Lodge; he is going to spend a little time in the county jail at the most. He insisted that you don't go to Deer Lodge for stealing less than $500.00; you don't get any more than what a justice court would impose except the possibility of a longer deferred imposition of sentence; and that is the only difference that you may lose or change.

REPRESENTATIVE RAMIREZ stated that he did not agree with REPRESENTATIVE SPAETH on this particular issue; some of the people out there are going to know exactly what they have done - someone who plays the system for all it is worth - and it may be that someone is not necessarily on the first offense going to go to Deer Lodge, but you certainly have some leverage. He said that if you believe at all that punishment or the potential of punishment is a deterrent, this would seem to say to him that if a misdemeanor means you can steal up to $500.00 or write a bad check for this amount and if they are just trying to get these people into justice court rather than district court, he did not feel that that is the way the criminal justice system should work.

REPRESENTATIVE ADDY asked what he thought the proper dividing line should be. REPRESENTATIVE RAMIREZ responded that whatever figure you put there is arbitrary and he did not know how long it has been at $150.00.

REPRESENTATIVE ADDY said that in 1917 it was $25.00 and it was changed to $150.00 in 1973.

REPRESENTATIVE DAILY commented that we are not talking about a nice guy here; we are talking about a guy going into somebody's house and stealing something; crime is on the increase and he thought that $150.00 is just perfect and he felt that is where they should leave it.

REPRESENTATIVE ADDY said that breaking into someone's house is burglary and they don't make that a misdemeanor.

REPRESENTATIVE JENSEN noted that it has been his experience that the toughest judges are not district judges; if you want to get a pretty stiff sentence and to be dealt with more severely is to let it be handled by the J.P. court. He thought if you consider the number of district judges they have and how they view these kind of cases vs. the number of J.Ps they have and the way they view these cases, you are going to find hard and soft in any court, but there are a lot more hard eggs than soft eggs in the J.P. court.

REPRESENTATIVE FARRIS wondered if punishment really deters people from committing crimes; she thought that somebody who is committing burglary is not thinking too far ahead and they don't think they are going to get caught so they did not think the punishment was going to affect them anyway. She continued that she supposed there are some people out there who do evaluate whether they can write a check for $499.00, but she thought they were few and far between compared to the person who writes a bad check because they do not have any money until pay day and they think they need some goods or services.

REPRESENTATIVE SPAETH commented that that is something else about a J.P. court - it is easier to get convicted and it is easier to get a trial - and he felt that you rarely see the inside of a district court on these kind of deals anyway; and it is a different world in a J.P. court.

REPRESENTATIVE ADDY wondered at what dollar amount would the judge take the case seriously; a J.P. may look at a $400.00 case as a very serious matter; a district court judge may look at a $200.00 case as a waste of his time and a big pain. He mentioned raising the amount to $300.00, but stated that if you reduce the increase too much, there will not be many cases moved from district court to justice court. He thought that $500.00 was a fairly good dividing line between what a district judge would take seriously and what a J.P. would take seriously. He continued that he is glad that they have some bills in the legislature that addresse restitution and he felt that too often society has thought retribution for the sake of society and has not thought restitution for the sake of the victim.

REPRESENTATIVE KEYSER said that if you take pressure off the district court, you put pressure on the J.P. court

and he felt that many of the J.P. courts are filled more than the district courts and this will undoubtedly add to the J.P. courts; some of them are loaded far more than they want them to be loaded and they may be coming in for extra J.Ps.

REPRESENTATIVE IVERSON said that he liked the bill, but he has trouble with the $500.00 figure. He moved that the bill be amended on page 2, line 20, by inserting $300 in lieu of $500 and throughout the bill where it is appropriate. REPRESENTATIVE ADDY seconded the motion.

The motion carried with REPRESENTATIVE BERGENE, REPRESENTATIVE DAILY and REPRESENTATIVE HANNAH voting no.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE DAILY questioned on page 11, Section 9, which is existing law, if they killed this bill or tabled this bill, would all that language still be in the law. REPRESENTATIVE ADDY replied that that is right.

REPRESENTATIVE DAILY asked if the only thing the bill does is change the amount from $150.00 to $300.00, changes the 90 to 180 days and adds that section (v). REPRESENTATIVE ADDY responded in the affirmative.

The motion carried with 11 voting aye and 7 voting no. See ROLL CALL VOTE.

SENATE BILL 138

REPRESENTATIVE J. BROWN moved that the bill BE CONCURRED IN. REPRESENTATIVE DAILY seconded the motion.

CHAIRMAN BROWN noted that he checked the language on page 4 that he was concerned about and there is no problem with it.

REPRESENTATIVE HANNAH stated that he could not support the bill because most bills they get are single titled, single purposed and they get a chance to review that and a chance to talk about the pros and cons, they get a chance to hear

testimony and here they have a bill that is 160 pages that has multiple changes dealing with bringing the laws into uniform conformity with other states. He felt that this bill is not totally uniform with other states; it has been amended and changed; he felt they may be good changes; but he had not had the opportunity or the time to listen to the testimony on this; and for this reason, he cannot support the bill.

CHAIRMAN BROWN explained that the reason for this bill coming over farily late was that the Senate did spend an enormous amount of time on it; they had a two-hour work session with Professor Wise, going through it page by page, line by line, and he wanted to point out that at least one body had spent the time required. He indicated that Professor Wise is agreeable to spending the hours with us if we want him to do so.

REPRESENTATIVE HANNAH exclaimed that he has taken some very nice bills to the Senate and they have never seen the light of day.

There was no further discussion and the motion carried with REPRESENTATIVE KEYSER and REPRESENTATIVE HANNAH voting no.

SENATE BILL 194

REPRESENTATIVE FARRIS moved that the bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

MS. DESMOND passed out some proposed amendments. See EXHIBIT C. She explained that she could not remember who requested the amendments, but there was some question about whether the clerk of the district court or the jury commissioner should be permitted or required to excuse jurors from the jury, and the feeling was it would be better to have that responsibility with the judge.

REPRESENTATIVE RAMIREZ informed the committee that he was the one that asked for these amendments; but he got very effectively lobbied on this, because he changed his mind; he talked to a couple clerks of the court; his concern was that the judges were not tough enough; they excused too many people; and the clerks of the court convinced him that they would be

as tough or tougher in this. He continued that the other thing that made him willing to go the other way is that they use to have standards as to who could be excused and who could not be excused; somehow, those were eliminated; he felt there was a better chance, if this does not work and too many people are excused by the clerks, of getting standards imposed upon them than if they tried to impose the standards upon the judges. He said that he did not want to move the adoption of these amendments as he would like to see if this works.

CHAIRMAN BROWN thought that the bill had been amended in the Senate to show that this would have to be with the approval of the court so that the judge had a choice.

REPRESENTATIVE ADDY replied that that was right.

REPRESENTATIVE RAMIREZ declared that he thought that was more illusionary than real because the judge will say do what you want. CHAIRMAN BROWN responded not the ten judges he has heard from - they do not want the clerk of the court to have anything to do with jury selection.

REPRESENTATIVE JENSEN commented that maybe this is a good time that we should take that choice away from them. CHAIRMAN BROWN answered that if they do that, he will do everything he can to kill this bill.

REPRESENTATIVE SPAETH said that he would have to disagree; that if he wanted to go in and be excused, he could guarantee that he could be excused, except maybe in the big cities, a lot easier by the clerk of the court than he could from the judge. He explained that he may not even bring up some of the reasons that he might wish to be excused with the judge and he felt that in small towns, the clerks and the court are part of the little "good boy" system in the courthouse and if you are part of the "good boy" system that operates there, you are going to get off of jury duty and he thought that it would be easier to get excused by the clerk of the court than it is by the judge. He continued that maybe in the bigger cities that may not be the case, but in rural Montana, this is true.

REPRESENTATIVE KEYSER said that he dealt with some small area judges and he felt that they were about equal; the judges are not too tough about excusing people - not near as tough as he thinks they should be; and he has no more problem with the clerk of the court than he does with the judge.

REPRESENTATIVE RAMIREZ indicated that their objective was to make it a little tougher for people to be excused; we have some judges who are really tough, and with the Senate language, they are probably going to exercise pretty good control; and for the ones who are lax, if they leave it with the judges, at least they have a chance to see if the clekrs might be a little tougher; and if they are not tougher, they could put some standards in down the road. He finalized that he was willing to go with the bill as it is and see how it works.

CHAIRMAN BROWN noted that they had one judge in Butte, Arnold Olson, who requires that you must be on your death bed in order to be excused from jury duty, and he will even question that too.

There were no further questions or discussion and the motion carried with REPRESENTATIVE SPAETH, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE EUDAILY and REPRESENTATIVE SEIFERT voting no. The vote was 15 to 4.

SENATE BILL 2

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE HANNAH.

REPRESENTATIVE KEYSER said that the provision to handle the constitutional problems or any other problems that were brought up in the testimony are definitely handled on the next page, and he would assume that those are Senate amendments. He then said that this was new language that was put in, but he felt that it was well covered and he does not have any problem with it. He continued that there was definitely protection for the man who has had an incompetent attorney that has not done the job for him; and he

thought that on line 13, page 2, subsection 3, where it says, "material and controlling facts upon which the claims is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence" that this would give him all the coverage he needs. He did not think there was any testimony that this did not protect the defendant.

REPRESENTATIVE SPAETH said that he at first was hesitant about this bill, but he felt that it was a matter of fairness that a person, when he is at trial, that his attorneys will make deliberate decisions about when they will object or not object, and if he decides not to object, this gives him a second time around, the way the law is presently directed. He commented that if the attorney fails to object and he does not know why he did not object, he may have incompetent counsel. He closed by saying that he thought it was a good bill.

REPRESENTATIVE ADDY noted that when it comes to jurisdictional rights, the court can raise these questions on its own motion; he felt that this bill was headed in the right direction.

REPRESENTATIVE FARRIS commented that when she first heard this, she felt hampered by not being a lawyer or not being around courts very much; but she is looking at it from the point of view of a person who is not a lawyer and is not around the courts very much. She thought that in reading the last section, there may be something that is not known to the defendant or the attorneys; the attorney could know things that the defendant does not know and if the attorney got squished in a car accident, the defendant could be sitting in jail knowing nothing and he would not have the right to appeal. She contended that you cannot claim constitutional rights if you did not do it when you were talking about it in the trial and this did not make any sense to her. She stated that she certainly wanted to limit appeals as much as anyone else but she felt that this was a bad bill and she contended that it does not make sense to put this kind of pressure on people to notice everything that is going

on around them during the stress and strain of a trial; and then say, well, if you did not speak up then you do not have a chance to speak at all.

REPRESENTATIVE CURTISS pointed out that the interim committee on judiciary worked very hard on this over a two-year period; they had a lot of testimony, they had attorneys, they had the attorney general's people; the judges commented and it did not seem to be that big a problem. She felt it was an area that has to be addressed if they are going to tighten up the appeals system.

REPRESENTATIVE ADDY declared that this bill addresses what questions can be appealed in the state system and it does not foreclose going to the federal system after going through the state system. He contended that this will not bar anybody from saying that their constitutional rights have been violated and kicking it over into the federal system.

There was no further discussion and the motion carried with a vote of 13 ayes and 6 nos. See ROLL CALL VOTE.

REPRESENTATIVE KEYSER will carry the bill on the floor of the House.

SENATE BILL 201

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JENSEN.

REPRESENTATIVE ADDY moved to amend each section of the bill by inserting at the end of each section the following language: "Nothing in this section shall be construed to prohibit the prosecutor from granting immunity from prosectution on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be so served." He explained that what they are saying is that when a prosecutor does not think he needs to grant transactional immunity; when the prosecutor gets into a situation where he feels that they are not going to get the cooperation of the codefedant, the prosecutor does have the option

under this statute to grant transactional immunity. He continued that it also makes it clear that it is the sole discretion of the prosecutor in this amendment. REPRESENTATIVE JENSEN seconded the amendment.

REPRESENTATIVE HANNAH questioned if this meant that they can do either one. REPRESENTATIVE ADDY replied yes.

REPRESENTATIVE RAMIREZ said that he thought this would work and the main thing is where the judge compels the prosecutor to grant immunity. He wondered if this was made clear enough. REPRESENTATIVE ADDY explained that the judge can't compel transactional immunity and he should only be able to compel use immunity and that is why you leave it up to the prosecutor.

There was no further discussion on the amendment and the motion carried unanimously.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The vote was 14 ayes and 5 nos with REPRESENTATIVE FARRIS, REPRESENTATIVE VELEBER, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE JENSEN, and REPRESENTATIVE EUDAILY voting no.

SENATE BILL 260

CHAIRMAN BROWN indicated that the committee had comparison sheets on the DUI bills. See EXHIBIT E and EXHIBIT F.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE KEYSER moved to amend the bill on page 2, line 5, following "public" by striking the rest of that language and the language on line 6, which states "with the express or implied consent of the owner". He contended that this would raise so many problems in a court or with an officer that it would absolutely be unworkable.

REPRESENTATIVE JENSEN said this would take out the legal argument that they did not have express or implied consent.

CHAIRMAN BROWN wondered if the language, "in common use by the public" would imply that the bar parking lot, etc. would not be affected by this. REPRESENTATIVE KEYSER explained that it says, "fitted for public travel that is in common use by the public" and this would handle the parking lot and that.

REPRESENTATIVE CURTISS said that she has a note that says that language has been upheld by the Washington state court. REPRESENTATIVE KEYSER asked "with the express or implied consent of the owner". He indicated that Betty Wing or one of them raised that question that that language would lead to a lot of problems. He commented that Washington does a lot of funny things.

REPRESENTATIVE FARRIS indicated that the testimony was that the language had been upheld in the court but this is just one more thing that you have to prove and that you have to argue about.

REPRESENTATIVE SPAETH asked if this was the same language that they worked on in HB 808. CHAIRMAN BROWN said that this is the same definition as is in HB 808, but that HB 808 is dead.

REPRESENTATIVE KEYSER noted that this would also have to be striken in the title.

There was no further discussion and the motion carried with REPRESENTATIVE DAVE BROWN, REPRESENTATIVE RAMIREZ, REPRESENTATIVE SPAETH and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE DAVE BROWN moved that the bill be amended on page 3, line 3, by striking "within this state" and insert "upon ways of the state open to the public" and the same on lines 6 and 7. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE BERGENE seconded the motion. The motion carried with REPRESENTATIVE SEIFERT and REPRESENTATIVE DAVE BROWN voting no. The vote was 17 ayes and 2 nos.

SENATE BILL 313

REPRESENTATIVE DAVE BROWN noted that this bill was similar to HB 808, which was officially tabled in the Senate Judiciary as of yesterday, and HB 540, the per se law, had not been acted on, but would probably be tabled on this date. He informed the committee that Senator Turnage expressed the opinion that anytime a machine takes the place of a judge, that they are in trouble.

REPRESENTATIVE FARRIS moved that this bill BE CONCURRED IN. REPRESENTATIVE BERGENE seconded the motion.

CHAIRMAN BROWN moved that the bill be amended on page 1, line 17, by striking "the public highways of this state" and inserting "ways of the state open to the public" and also on page 2, line 2, page 2, line 21, page 4, line 7. REPRESENTATIVE SPAETH seconded the motion.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved to amend the bill on page 4, line 7, by striking "shall reside" and inserting "resides or in the district court in the county in which the arrest was made". REPRESENTATIVE IVERSON seconded the amendment.

CHAIRMAN BROWN wondered if this meant that if hewere picked up in Yellowstone County, would they take him back to Butte. REPRESENTATIVE ADDY replied that it would be your choice.

CHAIRMAN BROWN clarified by saying you would still have a choice and could do it either place, but under the existing statute you would have to go back to the county in which you reside.

REPRESENTATIVE SPAETH said that he was not sure why they were doing this. MS. DESMOND replied that one reason that was given was that students that are arrested that are in school in Missoula, if they want to appeal under existing law, have to go back to the counties in which they reside.

The motion carried unanimously.

REPRESENTATIVE JENSEN noted the language on page 3, line 4 wherein it says, "the peace officer shall issue a temporary driving permit, which is valid for 72 hours after the time

of issuance." REPRESENTATIVE FARRIS wondered why they did not offer an amendment to strike section 4.

REPRESENTATIVE RAMIREZ said that before you take someone's license away, they might have some things they need to deal with, such as taking their automobile back to their home. He explained that an individual might be arrested in Missoula and living in Billings; or they may be on a trip or something like that.

REPRESENTATIVE JENSEN asked why they do not give them a 72-hour notice to appear.

REPRESENTATIVE RAMIREZ commented that it also gives them an opportunity to appeal.

REPRESENTATIVE KEYSER explained that the whole reason for taking the license away at the time is administrative as it stops the hassle of going back out and picking up a man's license at a later date; and there is some legitimate reasons for giving him extra time. He explained that an individual has been arrested, maybe he has been in the drunk tank until he can sober up; then he should be able to take the car and go home. He noted that is why they need to give him that three-day permit.

REPRESENTATIVE FARRIS exclaimed that this doesn't say after he is sober, he can drive. REPRESENTATIVE KEYSER said they are arresting him for it, but he is usually either locked up or they take him home. He continued that they still have that license and the license is no good anyway after the end of that third day.

REPRESENTATIVE CURTISS wondered if this language conforms to the guideline whereby the department is trying to get the $1 million. LARRY MAJERUS, Administrator of the Motor Vehicle Department of the Department of Justice, informed the committee that this issue is not addressed in any of the federal guidelines; when they talk about immediate suspension, they are talking about picking up the driver's license; the reason for the 72-hours is that in subsection 4, it says that the police officer shall seize the driver's license on behalf of the division; the suspension really does not take place until the affidavit is reviewed by the division; and

the suspension will usually take place some three days later. He explained that normally the police officer will place it in the mail within 24 hours; they will receive it within 24 hours; and they will suspend the same day they receive it. He said it takes three days to suspend the license and there was some concern, that if you suspend it, the individual can still drive anyway; and in giving him a slip of paper that shows he is pending suspension, this would serve the purpose.

REPRESENTATIVE JENSEN asked what then is the reason for taking the license. MR. MAJERUS replied that if they don't take the license, then normally in 60 per cent of the cases, they will have to send out a pickup order, which means they will write a letter asking them to submit their license and only 40 per cent of the people do submit their license; then the patrolman has to physically go and secure the license.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. The motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE SPAETH said that he thought if they refuse to take a breathalyzer test, they should not be allowed to drive, and he felt that the whole purpose of the bill is to encourage people to take a breathalyzer.

REPRESENTATIVE JENSEN asked if the refusal to take the breathalyzer test can be construed as an admission of guilt. REPRESENTATIVE SPAETH replied that he did not say that this was to be construed as an admission of guilt or innocence; but when you get your driver's license, you agree to comply with certain requirements and one of these requirements is that you will take a breathalyzer test.

The motion carried with 12 voting aye and 7 voting no. See ROLL CALL VOTE.

REPRESENTATIVE BERGENE wondered about the suggestion that they had concerning an interim committee that might look at the insanity defense along with the committment laws and she asked if they should have a committee bill. She informed the committee that she checked with the mental health center in Great Falls and talked with two of the psychiatrists there;

and they thought that the implementation of the insanity defense is confusing; but basically they thought that it was good. They felt that too often pyschiatrists play God, she stated, but there is a lot of confusion over the law; but it is being implemented, although there are some attorneys who are trying to skirt around it.

She advised that they felt the committment law was basically good, but it needs some work to clear it up because of the impact on those families where some individuals who really should be committed are not being committed because some people are not able to make a judgment.

She continued that they felt a very serious problem that people in Montana have not spoken of is with the individuals on the Indian Reservations, other than the Flathead Reservation, who do not have a tribal agreement with the health centers and who simply will not come into the community because they want to take care of these matters within their tribe; and, yet, they do not have the facilities to do this; and this causes a lot of problems. She indicated that the mental health people are quite concerned about this and wondered if this could be discussed quite openly at the same time.

REPRESENTATIVE KENNERLY commented that he know that there are problems.

REPRESENTATIVE CURTISS moved that Senate Bill 347 be taken off the table for consideration. REPRESENTATIVE IVERSON said that he did not agree with what Representative Curtiss is trying to do at all. He explained that he thought they were going to have to pass that bill or something like it, but he thought that HB 888 is extremely critical; and he felt they should see if they can shake it loose over there. He stated that there are some bullheaded people doing some dumb things; he is not talking about holding it hostage or anything like that; it is just that it is not treated with any sense over there; and he thought it would be better to wait. REPRESENTATIVE CURTISS withdrew her motion.

REPRESENTATIVE JENSEN said, in relation to Representative Bergene's concerns, considering the tenure of the comments of the psychiatrists that maybe a bill to address this should be considered in the next session. REPRESENTATIVE BERGENE

indicated that she thought, before something could go into a bill, it should come out of a study, as it would be such a hard thing to do without some kind of study.

CHAIRMAN BROWN noted that he has no objection to doing this, but he would rather see this be introduced on a different basis; but he really did not care if the committee wanted to do this.

REPRESENTATIVE BERGENE said that she understood and she just asked them the questions.

CHAIRMAN BROWN emphasized that he appreciated the work that everyone has done and that when conference committees come along that both he and Ms. Desmond are available for whatever purposes they might need.

REPRESENTATIVE BERGENE informed the committee that the American Psychiatric Association is working on a model bill that will speak to the committment laws, and, on that basis, they could have a bill.

CHAIRMAN BROWN offered a public thank-you to Ms Desmond for all her good work and also a thanks to Ms. Omang for all her work during the last half of the session.

REPRESENTATIVE KEYSER moved that the hearing be adjourned at 10:53 a.m.

Dave Brown
DAVE BROWN, Chairman

Alice Omang
Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 22, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 237

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A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A PROCEDURE FOR RESTITUTION TO VICTIMS OF CRIMES BY THE CRIMINAL OFFENDERS AND A PROCEDURE UPON DEFAULT IN PAYMENT OF RESTITUTION."

Respectfully report as follows: That SENATE Bill No. 237
BE AMENDED AS FOLLOW:

1. Page 1, line 21.
Following: "OFFICER"
Insert: ", restitution officer, or other designated person"

2. Page 3, lines 11 and 12.
Following: "the"
Strike: "statutory" through "offense" on line 12.
Insert: "period for which the sentence has been suspended or deferred under 46-18-201

3. Page 3, line 14.
Following: "payment"
Strike: "or other restitution"

XXXX
DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 22, 1983

4. Page 3, line 16.
Following: "pay"
Strike: "or perform"

5. Page 3, line 22.
Following: "officer"
Insert: ", restitution officer, or other designated person"

6. Page 3, lines 23 and 24
Following: "payment"
Strike: "or other performance"

7. Page 4, lines 14 and 15.
Following: "the" on line 14.
Strike: "statutory" through "offense" on line 15.
Insert: "period for which the sentence has been suspended or deferred under 46-18-201"

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 23, 1983 19

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 391

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"AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; ~~PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF CERTAIN COSTS OF CONFINEMENT, REQUIRING MANDATORY RESTITUTION, PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL, AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY THE STATE TO THE COUNTIES,~~ AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, ~~46-8-112, 46-8-113, AND 46-18-201,~~ MCA; ~~REPEALING SECTIONS 46-8-114 AND 46-8-115, MCA,~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 391

Be amended as follows:

1. Title, line 7.
Following: "INCREASED"
Insert: "INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT;"

2. Title, line 13.
Following: "45-7-210,"
Insert: "46-18-201,"

3. Title, line 13.
Strike: ";" and through "DATE" on line 15.

XXXXXX
DO PASS

DAVE BROWN
Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 23 19 83

4. Page 2, line 20.
Strike: "$500"
Insert: "$300"

5. Page 4, line 19.
Strike: "$500"
Insert: "$300"

6. Page 4, line 22.
Strike: "$500"
Insert: "$300"

7. Page 6, line 3.
Strike: "$500"
Insert: "$300"

8. Page 6, line 7.
Strike: "$500"
Insert: "$300"

9. Page 7, line 1.
Strike: "$500"
Insert: "$300"

10. Page 7, line 5.
Strike: "$500"
Insert: "300"

11. Page 8, line 4.
Strike: "$500"
Insert: "300"

12. Page 9, line 16.
Strike: "$500"
Insert: "$300"

13. Page 10, line 25
Strike: "$500"
Insert: "$300"

14. Page 11, line 18.
Strike: "$500"
Insert: "$300"

15. Page 14, following line 10.
Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;
(ii) jail time not exceeding ~~90~~ 180 days;
(iii) conditions for probation;
(iv) restitution;
(v) payment of the costs of confinement;
~~(v)~~ (vi) payment of a fine as provided in 46-18-231;
~~(vi)~~ (vii) payment of costs as provided in 46-18-232 and 46-18-233;
~~(vii)~~ (viii) payment of costs of court appointed counsel as provided in 46-8-113;
~~(viii)~~ (ix) community service;
~~(ix)~~ (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
~~(x)~~ (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such resonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)~~(x)~~ (xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsection (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

March 23, 1983 19

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

16. Page 21, lines 20 and 21.
Strike: Section 9 in its entirety.

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 138

third reading copy (blue color)

BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE BY SUBSTANTIALLY ADOPTING THE 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW COMMISSIONERS; AMENDING SECTIONS 30-1-105, 30-1-201, 30-2-107, 30-2-207, 30-2-702, 30-4-208, 30-5-114, 30-5-116, 30-8-102 THROUGH 30-8-107, 30-8-201 THROUGH 30-8-208, 30-8-301 THROUGH 30-8-320, 30-8-401 THROUGH 30-8-406, 30-9-102 THROUGH 30-9-106, 30-9-203 THROUGH 30-9-205, 30-9-301, 30-9-302, 30-9-304 THROUGH 30-9-306, 30-9-308, 30-9-309, 30-9-312, 30-9-313, 30-9-318, 30-9-401 THROUGH 30-9-407, 30-9-501, 30-9-502, 30-9-504, AND 30-9-505, MCA; AND REPEALING SECTION 30-9-408, MCA."

Respectfully report as follows: That SENATE Bill No. 138

BE CONCURRED IN

~~DO PASS~~

DAVE BROWN, Chairman.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 22 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 194

third reading copy (blue) color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; ~~PROVIDING FOR PAYMENT OF WITNESS EXPENSES AND THE COSTS OF IMPANELING A JURY FROM THE DISTRICT COURT FUND; REQUIRING PAYMENT OF PART OF THE INTEREST ON THE TRUST FOR UNLOCATED MINERAL OWNERS TO THE DISTRICT COURT FUND~~; AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-205, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, ~~AND 82-1-304~~, MCA."

Respectfully report as follows: That SENATE Bill No. 194

BE CONCURRED IN

~~XXXXXX~~
DO PASS

DAVE BROWN Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 22, 1983

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 2

third reading copy (blue)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING, EXCEPT UNDER CERTAIN CIRCUMSTANCES, APPELLATE REVIEW OF ALLEGED ERRORS NOT OBJECTED TO DURING A CRIMINAL TRIAL; AMENDING SECTIONS 46-20-104 AND 46-20-702, MCA."

Respectfully report as follows: That SENATE Bill No. 2

BE CONCURRED IN
~~DO PASS~~

Dave Brown, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 23, 19 33

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 201

Third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT; AMENDING SECTIONS 30-10-304, 30-14-221, 46-4-305, AND 46-15-311, MCA."

Respectfully report as follows: That SENATE Bill No. 201

be amended as follows:

1. Title, line 9.
Following: "ABOUT"
Insert: ", BUT PROVIDING THAT WHEN THE PROSECUTOR DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, HE MAY GRANT THE WITNESS IMMUNITY FROM PROSECUTION FOR SUCH TRANSACTIONS"

2. Page 3, line 14.
Following: "case"
Strike: ", except" through "testifying" on line 16
Insert: "Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

DONASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 23, 19 83

3. Page 5, line 10.
Following: "prosecution"
Strike: ", except" through "testifying" on line 12
Insert: "Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

4. Page 5, line 20.
Strike: "immunity to"
Following: "subpoenaed"
Insert: "immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on an account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby"

5. Page 5, line 24.
Strike: "such"

6. Page 6, line 1.
Following: "him"
Strike: "; but" through "prosecution" on line 4.

7. Page 7, line 1.
Following: "prosecution"
Strike: ", except" through "testifying" on line 3
Insert: "Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

AND AS AMENDED
[illegible]
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 260

Third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE LAWS RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR PUBLIC TRAVEL AND USED BY THE PUBLIC WITH THE CONSENT OF THE OWNER; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA."

Respectfully report as follows: That SENATE Bill No. 260

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Following: "PUBLIC"
Strike: "WITH" through "OWNER" on line 8.

2. Page 1, line 21.
Following: "upon"
Strike: "highways" through "state" on line 22
Insert: "all ways of this state open to the public"

3. Page 2, line 5.
Following: "public"
Strike: "with" through "owner" on line 6.

4.

XXXXXXXX
DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 22, 19 83

4. Page 3, line 3.
Following: "vehicle"
Strike: "within this state"
Insert: "upon ways of this state open to the public"

5. Page 3, line 6.
Following: "vehicle"
Strike: "within this state"
Insert: "upon ways of this state open to the public"

AND AS AMENDED

BE CONCURRED IN

DAVE BROWN,
Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 22, 19 33

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 313

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY ~~SUSPEND OR REVOKE~~ SEIZE THE DRIVER'S LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; PROVIDING ~~A PERIOD OF REVOCATION AND~~ FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION; INCREASING THE PERIOD OF SUSPENSION; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL OF SUSPENSION TO THE COUNTY ATTORNEY; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA."

Respectfully report as follows: That SENATE Bill No. ~~19~~ 313

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Following: "PERSON"
Strike: "REFUSING"
Insert: "DRIVING UPON WAYS OF THIS STATE OPEN TO THE PUBLIC WHO REFUSES"

2. Title, line 10
Following: "SUSPENSIONS;"
Insert: "PROVIDING THAT AN APPEAL OF SUSPENSION MAY BE FILED IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE ARREST WAS MADE AS WELL AS IN THE DISTRICT COURT IN THE COUNTY OF THE DRIVER'S RESIDENCE;"

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 22 19 83

3. Page 1, line 17.
Strike: "the" through "state" on line 18.
Insert: "ways of this state open to the public"

4. Page 2, line 2.
Strike: "the" through "state" on line 3.
Insert: "ways of this state open to the public"

5. Page 2, line 21.
Strike: "the" through "state" on line 22
Insert: "ways of this state open to the public"

6. Page 4, line 7.
Following: "person"
Strike: "shall reside"
Insert: "resides or in the district court in the county in which this arrest was made"

7. Page 4, line 16.
Following: "upon"
Strike: "the public highways"
Insert: "ways of this state open to the public"

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE ------ JUDICIARY COMMITTEE

	Date: 3/22 No: SB 391 Be Concurred In As Am.	Date: 3/22 No: SB 2 Be Concurred In	Date: 3/22 No: SB 313 Be Concurred In	Date: No:	Date No:	Date No:	Date: No:
BROWN, Dave	yes	no	no				
ADDY, Kelly	yes	yes	yes				
BERGENE, Toni	---	yes	yes				
BROWN, Jan	yes	no	yes				
CURTISS, Aubyn	no	yes	yes				
DAILY, Fritz	no	yes	no				
DARKO, Paula	yes	no	yes				
EUDAILY, Ralph	no	yes	no				
FARRIS, Carol	yes	no	yes				
HANNAH, Tom	no	yes	yes				
IVERSON, Dennis	yes	yes	no				
JENSEN, James	yes	no	no				
KENNERLY, Roland	no	yes	no				
KEYSER, Kerry	no	yes	yes				
RAMIREZ, Jack	no	yes	yes				
SCHYE, Ted	yes	yes	yes				
SEIFERT, Carl	yes	yes	no				
SPAETH, Gary	yes	yes	yes				
VELEBER, Dennis	yes	no	yes				
	11 - 7	12 - 7	12 - 7				

Exhibit A
SB 237
3/22/83

AMENDMENTS TO SENATE BILL NO. 237 - HALLIGAN

1. Page 1, line 21.
   Following: probation officer
   Insert: ", restitution officer or other designated person"

2. Page 3, lines 11 and 12.
   Strike: "statutory maximum term of confinement that can be imposed for the offense."
   Insert: "period for which the sentence has been suspended or deferred under 46-18-201."

3. Page 3, line 14.
   Following: payment
   Strike: "or other restitution,"

4. Page 3, line 16.
   Following: pay
   Strike: "or perform"

5. Page 3, line 22.
   Following: probation officer
   Insert: ", restitution officer or other designated person"

6. Page 3, lines 23 and 24.
   Following: payment
   Strike: "or other performance"

7. Page 4, lines 14 and 15.
   Strike: "statutory maximum term of confinement that may be imposed for the offense"
   Insert: "period for which the sentence has been suspended or deferred under 46-18-201"

A

Exhibit B
SB 391
3/22/83

AMENDMENTS TO SENATE BILL NO. 391 -- ECK

1. Page 1, line 13.
   Following: 45-7-210,
   Insert: "46-18-201,"

2. Page 11, lines 22 through 25.
   Insert original language - to read as follows:

   " Section 9. "46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court"

3. Page 12, lines 1 through 3.
   Strike: "restitution, repayment of costs of court-appointed counsel, and repayment of any costs of confinement under (section 10) and"

4. Page 12, lines 3 through 25.
   Insert original language with amendments** to read as follows:

   "may:
   (a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

   (i) jail base release;
   (ii) jail time not exceeding ~~90~~** 180 days;
   (iii) conditions for probation;
   (iv) restitution
   **(v) payment of the costs of confinement
   (vi) payment of a fine as provided in 46-18-231;
   (vii) payment of costs as provided in 46-18-232 and 46-18-233;
   (viii) community service;
   (ix) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
   (x) any combination of the above.

Exhibit C
SB 194
3/22/83

Proposed amendments to SB 194

1. Page 4, line 12.
Strike: "or jury commissioner"

2. Page 4, line 13.
Strike: "or" through "COURT" on line 14.

3. Page 4, line 22.
Strike: "or" through "COURT" on line 23.

4. Page 5, line 3.
Following: "court"
Strike: "jury commissioner"
Insert: "clerk of the court"

5. Page 5, line 7.
Following: "court"
Strike: "jury commissioner"
Insert: "clerk of the court"

6. Page 5, line 8.
Following: "court"
Strike: "or" through "COURT" on line 9.

540/260

SB 260 and HB 540: EXPANSION OF GEOGRAPHICAL APPLICATION OF DUI LAWS.

I. Driving while under the influence of alcohol. 61-8-101. (Minor differences, no conflict).

A. HB 540:

The provisions prohibiting driving under the influence of alcohol apply "upon the ways of the state open to the public." (Both bills use the same definition of this phrase.)

B. SB 260:

The provisions prohibiting driving under the influence of alcohol apply "upon all ways of this state open to the public."

II. Driving while under the influence of drugs. 61-8-101. (Conflict).

A. HB 540:

The application of the prohibition against driving under the influence of drugs is limited by amending existing law, "shall apply upon highways and elsewhere throughout the state," (61-8-101 (1)(b)) to "shall apply upon the ways of the state open to the public."

B. SB 260:

The present law on the application of the prohibition against driving under the influence of drugs is unchanged.

E 1

III. 61-8-101 (2) (Different, but no conflict).

A. SB 260:

SB 260 adds "or on the ways of this state open to the public" to this subsection's exception from the application of the chapter to operation of vehicles (e.g. agricultural vehicles) directly across "the public roads and highways of this state." Thus driving across a road on a tractor is not considered operating a vehicle on "the public roads and highways of this state" <u>or</u> on "the ways of this state open to the public."

B. HB 540:

HB 540 does not make this addition.

IV. 61-8-401. Prohibition against driving under the influence of alcohol or drugs. (Conflict).

A. Application. (Conflict)

1. HB 540.

In amending 61-8-401, HB 540 limits the application of the prohibition against driving while under the influence of drugs to the "<u>ways of the state open to the public</u>" while under existing law, the prohibition applies "<u>within the state</u>."

2. SB 260.

In amending 61-8-401, SB 260 leaves these provisions unchanged.

B. New prohibition. (different but no conflict).

1. HB 540.

HB 540 adds a new subsection (c) that prohibits driving under the combined influence of alcohol and drugs.

2. SB 260.

SB 260 does not make this addition.

C. Technical differences and substantive additions.

HB 540 makes technical changes related to its creation of the "per se" crime of driving with a blood alcohol concentration of .1 or more as well as some other technical changes that are not in conflict with SB 260.

V. 61-8-403 (Conflict).

A. HB 540:

HB 540 changes the time that may elapse prior to a hearing on a petition to review a suspension from within 30 days of notice to the county attorney to within 10 days of that notice.

B. SB 260:

SB 260 leaves the existing statutory language of 30 days.

VI. 61-8-404.

HB 540 adds to this section, provisions permitting the use as evidence, of a laboratory report as opposed to testimony of a laboratory technician. SB 260 does not make this addition.

808/313

Comparison of House and Senate DUI Bills

SB 313 and HB 808: SUSPENSION OF DRIVER'S LICENSE FOR REFUSAL TO SUBMIT TO CHEMICAL TEST.

I. Geographical Application: (Different but no conflict) HB 808 applies to chemical tests given to drivers on "the ways of the state open to the public." SB 313 applies to chemical tests given to drivers on "the public highways of this state." (If HB 808 or HB 540, which also uses "the ways of the state open to the public," pass, that phrase will be merged in the sections affected by SB 313).

II. 61-8-402: Suspension procedure.(Conflict)

A. HB 808.

1. Officer seizes and suspends license on behalf of division and gives notice of suspension and review procedure and temporary driver's permit valid for 48 hours. Procedure is the same for nonresident drivers except that the officer does not seize the license. (Conflict).

2. Suspension: (Conflict)

a. 60 days if no refusal within preceding 5 years.

b. one year if refusal within preceding 5 years.

B. SB 313.

1. Officer seizes license and sends to division (but officer does not suspend on behalf of division) and issues a 72 hour temporary driving permit. Procedure is the same for nonresidents except that there is no provision excepting them from the seizure rule. (Conflict)

2. Suspension: (Conflict)

a. 90 days if first refusal; no probationary license.

b. 6 months if second refusal within 5 years; no probationary license.

III. 61-8-403: Review of suspension. (Some conflict)

A. HB 808.

1. Court. Petition for review may be filed in district court of county of driver's residence or in district court of county where arrest was made. (Different but no conflict)

2. Time. Hearing must be set upon 30 days notice to county attorney. (Conflict)

B. SB 313.

1. Court. Petition for review may be filed in district court of county of driver's residence only. (Different but no conflict)

2. Time. Hearing must be set upon 10 days written notice to the county attorney. (Conflict)